

above. The scant instances of praise for Appellee's work come nowhere close to the overwhelming praise found in *Martin*. Appellee's work thus lacks "recognized stature."

The district court erred in finding Appellee's work's popularity reflects the quality necessary for VARA protection because, as discussed above, the art community generally finds the artwork unremarkable. Appellee's fan base cannot count as a "cross-section" of society under the *Carter* test. If that were the case, the *Castillo* court that reviewed popular aerosols would have had no need to consult the opinion of experts. The aerosols' fan base would have been enough. Moreover, there is little persuasive evidence Appellee's fans find the work "meritorious," *Carter v. Helmsley-Spear*, 861 F. Supp. at 325–26, for anything more than its underlying message. The social media posts from fans in the record are either silent on work's quality or describe it as "disappointing." R. at 35, 37. In reality, the work has only received this much attention because of its popular environmental message. R. at 27, 33, 37. It goes too far to protect works like Appellee's that, though expressing a popular message, might only "one day" be "recognize[d] as significant." R. at 2. To do so would unduly suspend property owners like Peach Tree in uncertainty regarding their rights to their own artwork and discourage collecting, commissioning, and sponsoring the very art VARA attempts to protect.

The evidence firmly supports the conclusion that Appellee's work is not of "recognized stature." Therefore, it is not protected by VARA. Though Peach Tree regrets that the work cannot withstand being moved due to Appellee's choice of "delicate" paint, R. at 17, Peach Tree must be free to remove the work in the interest of safety because the work is not protected by VARA.

[Omitted]

Applicant Details

| | |
|----------------------|---|
| First Name | Sarah |
| Middle Initial | J. |
| Last Name | Brown |
| Citizenship Status | U. S. Citizen |
| Email Address | sjbrown@law.gwu.edu |
| Address | <div> Address Street 4001 9th St N, Apt 601 City Arlington State/Territory Virginia Zip 22203 Country United States </div> |
| Contact Phone Number | 5857542427 |

Applicant Education

| | |
|-----------------------|---|
| BA/BS From | Liberty University |
| Date of BA/BS | May 2013 |
| JD/LLB From | The George Washington University Law School |
| | https://www.law.gwu.edu/ |
| Date of JD/LLB | May 1, 2022 |
| Class Rank | Not yet ranked |
| Law Review/Journal | Yes |
| Journal(s) | Federal Circuit Bar Journal |
| Moot Court Experience | No |

Bar Admission

Prior Judicial Experience

| | |
|--------------------------------------|-----------|
| Judicial Internships/ Externships | No |
|--------------------------------------|-----------|

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Rogers, Harold (Hal)
Chelsea.Jarrett@mail.house.gov
Maggs, Gregory
gmaggs@law.gwu.edu
(703) 953-4807

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sarah J. Brown

4001 9th St. North, Apt. 601, Arlington, VA 22203 | 585-754-2427 | sjbrown@law.gwu.edu

June 16, 2021

The Honorable Elizabeth Hanes
United States District Court, Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige, Jr. Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Magistrate Judge Hanes,

I am a third-year, evening law student at The George Washington University Law School and I will graduate in May 2022. I am writing to apply for your 2022 Judicial Law Clerk position. I would be honored to serve the Eastern District of Virginia. Please see my resume, transcript, writing sample, and recommendations enclosed for your deliberation. Thank you for your time and consideration of my application.

Sincerely,

Sarah J. Brown

Enclosures

Sarah J. Brown

4001 9th St. North, Apt. 601, Arlington, VA 22203 | 585-754-2427 | sjbrown@law.gwu.edu

EDUCATION

| | |
|--|---------------------|
| The George Washington University Law School , Washington, DC | Expected, May 2022 |
| Part-Time Evening Student, J.D. Candidate; GPA, 3.488 | |
| <i>Journal:</i> Member, <i>Federal Circuit Bar Journal</i> | |
| <i>Honors:</i> Thurgood Marshall Scholar (top 16-35% of class) | |
| <i>Activities:</i> Associate Judge, GW Law SBA Judiciary | |
| Liberty University , Lynchburg, VA | Graduated, May 2013 |
| Transferred from Finger Lakes CC, Canandaigua, NY | Dec 2010 |
| B.A., Politics and Policy | |
| <i>Thesis:</i> <i>The Rising Power of the Supreme Court</i> | |
| <i>Honors:</i> <i>cum laude</i> , Pi Sigma Alpha National Honor Society, Dean's List (multiple semesters) | |
| <i>Activities:</i> Student Appeals Court Judge; Men's Intramural Soccer | |
| <i>FLCC Honors:</i> Superior Academic Achievement Award, 2011 Scholar Athlete of the Year (Alumni), Academic All-American, Phi Theta Kappa National Honor Society, Tau Sigma National Honor Society, Dean's List (all semesters) | |
| <i>FLCC Activities:</i> Division III Women's Soccer | |

SELECT PROFESSIONAL EXPERIENCE

| | |
|--|---------------------|
| Weiss LLP , Washington, DC | May 2021 – Present |
| <i>Summer Law Clerk</i> | |
| <ul style="list-style-type: none"> Draft, edit, and file complaints, responses, motions, and orders in both state and federal courts Coordinate discovery requests; attend client meetings and help clients prepare for depositions Conduct legal research and write both external and internal legal memos | |
| Wilmer Cutler Pickering Hale & Dorr LLP , Washington, DC | Oct 2019 – Present |
| <i>Conflicts Specialist</i> | |
| <ul style="list-style-type: none"> Research and analyze potential issues, resolve conflicts, and timely communicate project status / concerns to Partners regarding clearing work for new clients and new matters Draft, edit, and review engagement and consent letters to ensure compliance with ethics and client-firm relationship terms and advise Partners and attorneys on communicating with clients to resolve conflicts Take initiative by claiming outstanding / difficult requests and maintain ownership of all claimed matters; conduct both internal and external follow-ups and handle each project from start to finish | |
| United States House of Representatives , Washington, DC | Aug 2017 – Oct 2019 |
| <i>Special Assistant</i> , Ranking Member Harold Rogers KY-05 | |
| <ul style="list-style-type: none"> Edited and reviewed memos for State & Foreign Operations Subcommittee between the Member's personal and committee offices and successfully executed complex, cross-functional efforts between Chairwoman and the Ranking Member Served as Power of Attorney, maintaining Member's records and financial reports; timely submitted federal filings, including congressional financial disclosures under Ethics Committee guidelines and regulations Acted as liaison between Congressman and internal staff and all outside groups; drafted, edited, and compiled all communication from Member to outside organizations, persons, and entities | |
| United States House of Representatives , Washington, DC | Nov 2015 – Feb 2017 |
| <i>Scheduler</i> , Representative NY-27 | |
| <ul style="list-style-type: none"> Advised and consulted the Congressman and Chief of Staff on political strategy, essential meetings, and required events Edited speeches, talking points, press releases, and publications for both national and targeted audiences under demanding and time-conflicting deadlines Directed scheduling and all office logistics while simultaneously writing, prepping, and researching documents ranging from high-level public telecommunications policy letters to personal notes requiring Congressman's signature | |

SERVICE, LEADERSHIP, AND ADDITIONAL PROFESSIONAL EXPERIENCE

| | |
|---|-------------------------------|
| CLADC , <i>Legal Volunteer</i> ; Washington, DC | Jul 2019 – Present |
| Everybody Wins! DC Volunteer , <i>Reading Mentor</i> ; Washington, DC | Dec 2017 – Oct 2019 |
| Champions in Action Volunteer , <i>Head Soccer Coach</i> ; Washington, DC | Aug 2017, Nov 2017 – Sep 2018 |
| ACU , <i>Development Associate</i> ; Washington, DC | Feb 2017 – Jul 2017 |
| Valente & Associates , <i>Director of Office Operations</i> ; Washington, DC | Feb 2015 – Nov 2015 |
| CU Productions , <i>Production Coordinator</i> ; Washington, DC | Feb 2014 – Feb 2015 |
| Personal Interests: Playing Competitive Soccer, Politics, and Reading | |

THE GEORGE WASHINGTON UNIVERSITY

OFFICE OF THE REGISTRAR

WASHINGTON, DC

Gwid : G33019735

Date of Birth: 21-MAR

Date Issued: 13-JUN-2021

Record of: Sarah J Brown

Page: 1

Student Level: Law
Admit Term: Fall 2018Issued To: SARAH BROWN
4001 9TH ST NORTH

REFNUM:53521924

Current College(s): Law School
Current Major(s): LawAPT 601
ARLINGTON, VA 22203-1960

SUBJ NO COURSE TITLE CRDT GRD PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2018

Law School
Law

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|------------------------------------|---|------|-----|-----|
| LAW 6202 | Contracts I Maggs | 3.00 | A | |
| LAW 6206 | Torts Turley | 2.00 | A | |
| LAW 6212 | Civil Procedure I Morrison | 3.00 | B+ | |
| LAW 6216 | Legal Research And Writing Mcilmail | 2.00 | B+ | |
| LAW 6593 | Introduction To Legal Theory Turley | 1.00 | B+ | |
| Ehrs 11.00 GPA-Hrs 11.00 GPA 3.636 | | | | |
| CUM 11.00 GPA-Hrs 11.00 GPA 3.636 | | | | |
| THURGOOD MARSHALL SCHOLAR | | | | |
| TOP 16%-35% OF THE CLASS TO DATE | | | | |

Spring 2019

Law School
Law

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|------------------------------------|--------------------------------------|------|-----|-----|
| LAW 6203 | Contracts II Maggs | 3.00 | B- | |
| LAW 6206 | Torts Turley | 2.00 | A | |
| LAW 6213 | Civil Procedure II Schaffner | 3.00 | B+ | |
| LAW 6217 | Introduction To Advocacy Mcilmail | 2.00 | B+ | |
| Ehrs 10.00 GPA-Hrs 10.00 GPA 3.267 | | | | |
| CUM 21.00 GPA-Hrs 21.00 GPA 3.460 | | | | |
| Good Standing | | | | |
| THURGOOD MARSHALL SCHOLAR | | | | |
| TOP 16%-35% OF THE CLASS TO DATE | | | | |

Summer 2019

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|-----------------------------------|-------------------------|------|-----|-----|
| LAW 6230 | Evidence Kirkpatrick | 3.00 | A- | |
| Ehrs 3.00 GPA-Hrs 3.00 GPA 3.667 | | | | |
| CUM 24.00 GPA-Hrs 24.00 GPA 3.486 | | | | |

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO COURSE TITLE CRDT GRD PTS

Fall 2019

Law School
Law

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|------------------------------------|-------------------------------|------|-----|-----|
| LAW 6208 | Property Roberts | 4.00 | A | |
| LAW 6210 | Criminal Law Solove | 3.00 | B | |
| LAW 6214 | Constitutional Law I Maggs | 3.00 | B+ | |
| Ehrs 10.00 GPA-Hrs 10.00 GPA 3.500 | | | | |
| CUM 34.00 GPA-Hrs 34.00 GPA 3.490 | | | | |
| THURGOOD MARSHALL SCHOLAR | | | | |
| TOP 16%-35% OF THE CLASS TO DATE | | | | |

Spring 2020

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|-----------------------------------|---|------|-----|-----|
| LAW 6380 | Constitutional Law II Cheh | 3.00 | CR | |
| LAW 6521 | International Money Laundering Lasich | 3.00 | CR | |
| LAW 6677 | Pre-Trial Prac In Civil Cases Bennett | 3.00 | CR | |
| Ehrs 9.00 GPA-Hrs 0.00 GPA 0.000 | | | | |
| CUM 43.00 GPA-Hrs 34.00 GPA 3.490 | | | | |
| Good Standing | | | | |

...
DURING THE SPRING 2020 SEMESTER, A GLOBAL PANDEMIC CAUSED BY COVID-19 RESULTED IN SIGNIFICANT ACADEMIC DISRUPTION. ALL LAW SCHOOL COURSES FOR SPRING 2020 SEMESTER WERE GRADED ON A MANDATORY CREDIT/NO-CREDIT BASIS.

Summer 2020

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|-----------------------------------|------------------------------|------|-----|-----|
| LAW 6400 | Administrative Law Gavoor | 3.00 | B+ | |
| Ehrs 3.00 GPA-Hrs 3.00 GPA 3.333 | | | | |
| CUM 46.00 GPA-Hrs 37.00 GPA 3.477 | | | | |

***** CONTINUED ON PAGE 2 *****

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Edmundson
University Registrar

THE GEORGE WASHINGTON UNIVERSITY

OFFICE OF THE REGISTRAR

WASHINGTON, DC

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Gwid : G33019735
 Date of Birth: 21-MAR
 Record of: Sarah J Brown

Date Issued: 13-JUN-2021

Page: 2

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|---------|--------------|------|-----|-----|
|---------|--------------|------|-----|-----|

Fall 2020

| | | | | |
|----------|------------------------------------|-------|-----|-------|
| LAW 6250 | Corporations | 4.00 | A- | |
| LAW 6364 | White Collar Crime | 3.00 | A | |
| LAW 6502 | Formation-Government | 3.00 | CR | |
| | Contracts | | | |
| | Schooner | | | |
| Ehrs | 10.00 GPA-Hrs | 7.00 | GPA | 3.810 |
| CUM | 56.00 GPA-Hrs | 44.00 | GPA | 3.530 |
| | Good Standing | | | |
| | THURGOOD MARSHALL SCHOLAR | | | |
| | TOP 16% - 35% OF THE CLASS TO DATE | | | |

Spring 2021

| | | | | |
|----------|--------------------|-------|-----|-------|
| LAW 6236 | Complex Litigation | 3.00 | B+ | |
| | Trangsrud | | | |
| LAW 6360 | Criminal Procedure | 4.00 | B | |
| | Saltzburg | | | |
| LAW 6648 | Negotiations | 3.00 | A- | |
| | Ray | | | |
| Ehrs | 10.00 GPA-Hrs | 10.00 | GPA | 3.300 |
| CUM | 66.00 GPA-Hrs | 54.00 | GPA | 3.488 |
| | Good Standing | | | |

Summer 2020

| | | | | |
|----------|-------------------------|------|-------|--|
| LAW 6518 | Govt Contracts Overview | 1.00 | ----- | |
| | De | | | |
| | Credits In Progress: | 1.00 | | |

Fall 2020

| | | | | |
|----------|---------------------------|------|-------|--|
| LAW 6657 | Fed Circuit Bar Jrnl Note | 1.00 | ----- | |
| | Credits In Progress: | 1.00 | | |

Spring 2021

| | | | | |
|----------|---------------------------|------|-------|--|
| LAW 6657 | Fed Circuit Bar Jrnl Note | 1.00 | ----- | |
| | Credits In Progress: | 1.00 | | |

Summer 2021

| | | | | |
|----------|----------------------|------|-------|--|
| LAW 6342 | Trusts And Estates | 3.00 | ----- | |
| | Credits In Progress: | 3.00 | | |

***** CONTINUED ON NEXT COLUMN *****

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|---------|--------------|------|-----|-----|
|---------|--------------|------|-----|-----|

Fall 2021

| | | | | |
|----------|----------------------|------|-------|--|
| LAW 6342 | Trusts And Estates | 3.00 | ----- | |
| LAW 6369 | Computer Crimes | 2.00 | ----- | |
| LAW 6660 | Federal Circuit Bar | 1.00 | ----- | |
| | Journal | | | |
| LAW 6876 | Homeland Security | 2.00 | ----- | |
| | Credits In Progress: | 8.00 | | |

***** TRANSCRIPT TOTALS *****

| | Earned Hrs | GPA Hrs | Points | GPA |
|-------------------|------------|---------|--------|-------|
| TOTAL INSTITUTION | 66.00 | 54.00 | 188.33 | 3.488 |
| OVERALL | 66.00 | 54.00 | 188.33 | 3.488 |

***** END OF DOCUMENT *****

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Edmundson
 University Registrar

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

| | |
|--------------|--|
| 1000 to 1999 | Primarily introductory undergraduate courses. |
| 2000 to 4999 | Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work. |
| 5000 to 5999 | Special courses or part of special programs available to all students as part of ongoing curriculum innovation. |
| 6000 to 6999 | For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office. |
| 8000 to 8999 | For master's, doctoral, and professional-level students. |

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

| | |
|------------|--|
| 001 to 100 | Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit. |
| 101 to 200 | Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work. |
| 201 to 300 | Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean. |
| 301 to 400 | Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. |
| 700s | School of Business – Limited to doctoral students. The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors. |
| 801 | This number designates Dean's Seminar courses. |

The Law School

Before June 1, 1968:

| | |
|------------|---|
| 100 to 200 | Required courses for first-year students. |
| 201 to 300 | Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval. |
| 301 to 400 | Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval. |

After June 1, 1968 through Summer 2010 semester:

| | |
|------------|--|
| 201 to 299 | Required courses for J.D. candidates. |
| 300 to 499 | Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission. |
| 500 to 850 | Designed for advanced law degree students. Open to J.D. candidates only with special permission. |

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

| | |
|------------|--|
| 001 to 200 | Designed for students in undergraduate programs. |
| 201 to 800 | Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences. |

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

| | | | |
|------|----------------------------------|------|--|
| AU | American University | MMU | Marymount University |
| CORC | Corcoran College of Art & Design | MV | Mount Vernon College |
| CU | Catholic University of America | NVCC | Northern Virginia Community College |
| GC | Gallaudet University | PGCC | Prince George's Community College |
| GU | Georgetown University | SEU | Southeastern University |
| GL | Georgetown Law Center | TC | Trinity Washington University |
| GMU | George Mason University | USU | Uniformed Services University of the Health Sciences |
| HU | Howard University | UDC | University of the District of Columbia |
| MC | Montgomery College | UMD | University of Maryland |

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt, CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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1/7/2021

Academic Transcript

L03663882 Sarah J. Brown
Jan 07, 2021 03:09 pm

Academic Transcript

 This is not an official transcript. Courses which are in progress may also be included on this transcript.



[Transfer Credit](#) [Institution Credit](#) [Transcript Totals](#)

Transcript Data

STUDENT INFORMATION

Name : Sarah J. Brown
Birth Date: Mar 21, 1992

Curriculum Information

Current Program

Bachelor of Arts

Major and Department: Government: Politics &
Policy, Government

***Transcript type:WEB LU Unofficial Web Transcript is NOT Official ***

DEGREE AWARDED

Awarded: Bachelor of Arts **Degree Date:** Oct 10, 2013
Institutional Honors: Cum Laude

Curriculum Information

1/7/2021

Academic Transcript

Primary Degree

Major: Government: Politics & Policy

TRANSFER CREDIT ACCEPTED BY INSTITUTION [-Top-](#)

09-10: Finger Lakes Community College

| Subject | Course | Title | Grade | Credit Hours | Quality Points | R |
|----------------------|--------|--------------------------------|----------------------|---------------------|-------------------------|---------------------------|
| BUSI | 300 | Business Communications | P | 3.000 | | 0.00 |
| COMS | 101 | Speech Communication | P | 3.000 | | 0.00 |
| ECNC | 214 | Principles of Economics II (Ma | P | 3.000 | | 0.00 |
| ENGL | 101 | Composition & Rhetoric | P | 3.000 | | 0.00 |
| ENGL | 102 | Composition and Literature | P | 3.000 | | 0.00 |
| GOVT | 220 | American Government | P | 3.000 | | 0.00 |
| HIEU | 201 | Western Civilization I | P | 3.000 | | 0.00 |
| HIUS | 221 | Survey of American History I | P | 3.000 | | 0.00 |
| HIUS | 222 | Survey of American History II | P | 3.000 | | 0.00 |
| KINE | 1XX | Kinesiology Elective-Lower Lev | P | 2.000 | | 0.00 |
| KINE | 211 | Basketball/Soccer | P | 1.000 | | 0.00 |
| MATH | 201 | Intro. to Probability & Statis | P | 3.000 | | 0.00 |
| MATH | 211 | Intro. to Statistical Analysis | P | 3.000 | | 0.00 |
| SOCI | 200 | Introduction to Sociology | P | 3.000 | | 0.00 |
| SPAN | 101 | Elementary Spanish I | P | 3.000 | | 0.00 |
| SPAN | 102 | Elementary Spanish II | P | 3.000 | | 0.00 |
| | | | Attempt Hours | Passed Hours | Earned GPA Hours | Quality GPA Points |
| Current Term: | | | 45.000 | 45.000 | 45.000 | 0.000 |
| | | | | | 0.00 | 0.00 |

Unofficial Transcript

2010: Finger Lakes Community College

| Subject | Course | Title | Grade | Credit Hours | Quality Points | R |
|----------------------|--------|--------------------------------|----------------------|---------------------|-------------------------|---------------------------|
| BUSI | 301 | Business Law | P | 3.000 | | 0.00 |
| CHEM | 121 | General Chemistry I | P | 4.000 | | 0.00 |
| HIEU | 202 | Western Civilization II | P | 3.000 | | 0.00 |
| KINE | 1XX | Kinesiology Elective-Lower Lev | P | 2.000 | | 0.00 |
| KINE | 2XX | Kinesiology Elective-Lower Lev | P | 1.000 | | 0.00 |
| PHIL | 1XX | Philosophy Elective-Lower Leve | P | 3.000 | | 0.00 |
| SOCI | 1XX | Sociology Elective-Lower Level | P | 3.000 | | 0.00 |
| | | | Attempt Hours | Passed Hours | Earned GPA Hours | Quality GPA Points |
| Current Term: | | | 19.000 | 19.000 | 19.000 | 0.000 |
| | | | | | 0.00 | 0.00 |

Unofficial Transcript

2010: Monroe Community College

| Subject | Course | Title | Grade | Credit | Quality Points | R |
|---------|--------|-------|-------|--------|----------------|---|
|---------|--------|-------|-------|--------|----------------|---|

1/7/2021

Academic Transcript

| | | | | Hours | | |
|----------------------|-----|-------------------------|--------------|--------------|-------|--------------------|
| SPAN | 201 | Intermediate Spanish I | P | 3.000 | | 0.00 |
| SPAN | 202 | Intermediate Spanish II | P | 3.000 | | 0.00 |
| | | Attempt Hours | Passed Hours | Earned Hours | GPA | Quality GPA Points |
| Current Term: | | 6.000 | 6.000 | 6.000 | 0.000 | 0.00 |

Unofficial Transcript

INSTITUTION CREDIT [-Top-](#)

Term: Spring 2011

Academic Standing: Good Standing

Additional Standing: Dean's List

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|--------------------------------|--------------|----------------|---------------------|
| BIBL | 110 | UG | New Testament Survey | A | 3.000 | 12.00 |
| EVAN | 101 | UG | Evangelism and Christian Life | A | 2.000 | 8.00 |
| GNED | 101 | UG | Contemporary Issues I | A | 1.000 | 4.00 |
| GOVT | 200 | UG | Constitutional Govt & Free Ent | B | 3.000 | 9.00 |
| GOVT | 210 | UG | Introduction to Political Scie | A | 3.000 | 12.00 |
| GOVT | 482 | UG | Counter Intelligence | A | 3.000 | 12.00 |
| THEO | 201 | UG | Theology Survey I | A | 3.000 | 12.00 |

Term Totals (Undergraduate)

| | | Attempt Hours | Passed Hours | Earned Hours | GPA | Quality GPA Points |
|----------------------|--|---------------|--------------|--------------|--------|--------------------|
| Current Term: | | 18.000 | 18.000 | 18.000 | 18.000 | 69.00 |
| Cumulative: | | 18.000 | 18.000 | 18.000 | 18.000 | 69.00 |

Unofficial Transcript

Term: Fall 2011

Academic Standing: Good Standing

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|--------------------------------|--------------|----------------|---------------------|
| ENGL | 406 | UG | Lit of Civil War*Integrative | B | 3.000 | 9.00 |
| GNED | 102 | UG | Contemporary Issues II | A | 1.000 | 4.00 |
| GOVT | 320 | UG | American Executive Process/Ins | A | 3.000 | 12.00 |
| GOVT | 330 | UG | Intro to Comparative Politics | B | 3.000 | 9.00 |
| GOVT | 340 | UG | International Relations | B | 3.000 | 9.00 |
| GOVT | 421 | UG | American Constitutional Histor | B | 3.000 | 9.00 |
| GOVT | 480 | UG | Terrorism | A | 3.000 | 12.00 |

Term Totals (Undergraduate)

| | | Attempt Hours | Passed Hours | Earned Hours | GPA | Quality GPA Points |
|----------------------|--|---------------|--------------|--------------|--------|--------------------|
| Current Term: | | 19.000 | 19.000 | 19.000 | 19.000 | 64.00 |
| Cumulative: | | 37.000 | 37.000 | 37.000 | 37.000 | 133.00 |

Unofficial Transcript

Term: Spring 2012

Academic Standing: Good Standing

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|-------|--------------|----------------|---------------------|
|---------|--------------|-------|-------|--------------|----------------|---------------------|

1/7/2021

Academic Transcript

| | | | | | | | |
|------|-----|----|--------------------------------|---|-------|------|---|
| CSER | 399 | UG | Special Projects | A | 0.000 | 0.00 | I |
| GOVT | 302 | UG | Modern Political and Economic | B | 3.000 | 9.00 | |
| GOVT | 322 | UG | American Legislative System | B | 3.000 | 9.00 | |
| GOVT | 350 | UG | Political Economy and Public P | B | 3.000 | 9.00 | |
| GOVT | 425 | UG | American Foreign Policy | B | 3.000 | 9.00 | |
| GOVT | 490 | UG | Political Theory | B | 3.000 | 9.00 | |
| GOVT | 492 | UG | Senior Seminar | B | 3.000 | 9.00 | |

Term Totals (Undergraduate)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 18.000 | 18.000 | 18.000 | 18.000 | 54.00 | 3.00 |
| Cumulative: | 55.000 | 55.000 | 55.000 | 55.000 | 187.00 | 3.40 |

Unofficial Transcript

Term: Summer 2012

Academic Standing: Good Standing

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|--------------------------------|--------------|----------------|---------------------|
| CRST | 290 | UG | History of Life | A | 3.000 | 12.00 |
| CSER | 399 | UG | Special Projects | F | 0.000 | 0.00 |
| HUMN | 101 | UG | Humanities in Western Culture | A | 3.000 | 12.00 |
| INFT | 110 | UG | Computer Concepts & Applicatio | A | 3.000 | 12.00 |
| PHIL | 201 | UG | Philosophy & Contemporary Idea | A | 3.000 | 12.00 |

Term Totals (Undergraduate)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 12.000 | 12.000 | 12.000 | 12.000 | 48.00 | 4.00 |
| Cumulative: | 67.000 | 67.000 | 67.000 | 67.000 | 235.00 | 3.50 |

Unofficial Transcript

Term: Fall 2012

Academic Standing: Good Standing

Additional Standing: Dean's List

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|-----------------------------|--------------|----------------|---------------------|
| BIBL | 105 | UG | Old Testament Survey | A | 3.000 | 12.00 |
| GOVT | 499 | UG | Field Research (Internship) | A | 6.000 | 24.00 |
| THEO | 202 | UG | Theology Survey II | B | 3.000 | 9.00 |

Term Totals (Undergraduate)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 12.000 | 12.000 | 12.000 | 12.000 | 45.00 | 3.75 |
| Cumulative: | 79.000 | 79.000 | 79.000 | 79.000 | 280.00 | 3.54 |

Unofficial Transcript

Term: Spring 2013

Academic Standing: Good Standing

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | Start and End Dates |
|---------|--------------|-------|------------------------|--------------|----------------|---------------------|
| CSER | 399 | UG | Special Projects | A | 0.000 | 0.00 |
| ENGL | 202 | UG | American Literature II | A | 3.000 | 12.00 |

https://selfservice.liberty.edu/BANPROD/bwskotr.P_ViewTran

4/5

1/7/2021

Academic Transcript

| | | | | | | |
|------|-----|----|-------------------------------|---|-------|-------|
| GOVT | 329 | UG | American Exceptionalism | A | 3.000 | 12.00 |
| PHIL | 468 | UG | The Thought of J.R.R. Tolkien | B | 3.000 | 9.00 |

Term Totals (Undergraduate)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 9.000 | 9.000 | 9.000 | 9.000 | 33.00 | 3.66 |
| Cumulative: | 88.000 | 88.000 | 88.000 | 88.000 | 313.00 | 3.55 |

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

| Level Comments: | Degree Awarded GPA 3.55 | | | | | |
|---------------------------|-------------------------|--------------|--------------|-----------|----------------|------|
| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
| Total Institution: | 88.000 | 88.000 | 88.000 | 88.000 | 313.00 | 3.55 |
| Total Transfer: | 70.000 | 70.000 | 70.000 | 0.000 | 0.00 | 0.00 |
| Overall: | 158.000 | 158.000 | 158.000 | 88.000 | 313.00 | 3.55 |

Unofficial Transcript

RELEASE: 8.7.1

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HAROLD ROGERS
5TH DISTRICT, KENTUCKY
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
STATE AND FOREIGN OPERATIONS
RANKING MEMBER
SUBCOMMITTEE ON DEFENSE



Congress of the United States
House of Representatives
Washington, DC 20515-1705

PLEASE RESPOND TO:

- WASHINGTON OFFICE:
- ☐ 2406 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1705
(202) 225-4601
- DISTRICT OFFICES:
- ☐ 551 CLIFTY STREET
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(606) 679-8346 OR
1-800-632-8588
 - ☐ 48 SOUTH KENTUCKY HIGHWAY 15
HAZARD, KY 41701
(606) 439-0794
 - ☐ 110 RESOURCE COURT
SUITE A
PRESTONBURG, KY 41653
(606) 886-0844

March 25, 2021

Dear Judge:

I write with my strongest possible endorsement of Sarah Brown's candidacy for a clerkship position in your chambers. Sarah worked closely alongside me in her capacity as my special assistant and scheduler. As you can imagine, life on Capitol Hill is a fast-moving, dynamic world where no day is quite like the other. Professional success in this environment demands adaptability and strong communications skills. Sarah possesses all these qualities and more. Sarah's tenure with my Washington, DC office showcased her ability to solve problems and anticipate my staffing needs under shifting time-constraints and evolving congressional priorities. Sarah exercised an innate ability to anticipate issues and find resolutions.

Sarah served as a leader in my office, routinely coordinating my schedule with my Chief of Staff and legislative assistants. Sarah's attention to detail and organization ensured seamless administration of my personal and professional agenda, even when conflicting demands required the schedule to be rearranged. Sarah never failed to simultaneously prioritize my legislative duties and constituents' needs.

While on my staff, Sarah applied and was accepted at the George Washington University Law School. Sarah impressively navigated working full time while taking on the demands of a rigorous legal education. As her time in my office continued, I trusted Sarah to take on additional responsibilities. Sarah was an independent worker and completed her projects without supervision. She also closely worked with my Chief of Staff in both the daily operations of the office and on overlapping financial matters. Sarah regularly synthesized complex administrative and legislative information into short, articulate briefs which she would present to myself and our staff in both Kentucky and Washington, D.C.

Finally, beyond her professional acumen, Sarah is a woman of impeccable character and integrity. There was never a moment when I doubted her honesty, and am confident she will bring these values to her legal career. Given her extensive qualifications, I believe Sarah will be a successful attorney and an excellent clerk. Sarah distinguished herself in my office and will surely be an asset to your judicial chambers. Please feel free to contact me in my Washington office (202) 225-4601 with any questions.

Sincerely,

HAL ROGERS

Member of Congress



**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

450 E Street, N.W.
Washington, D.C. 20442-0001

**GREGORY E. MAGGS
JUDGE**

TEL (202) 761-1458
FAX (202) 761-7000

March 5, 2021

Subject: Letter of Recommendation for Clerkship Applicant Sarah Brown

Dear Judge:

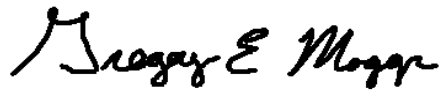
Ms. Sarah Brown, a student at the George Washington University Law School, has informed me that she is applying for a clerkship in your chambers. She is very accomplished, and I am delighted to recommend her.

I know Sarah well because she was in my Constitutional Law I, Contracts I, and Contracts II courses at GW, where I am an adjunct instructor. The first semester of the Contracts course concerns the common law of contracts, while the second semester primarily addresses the law of sales under the Uniform Commercial Code. The Constitutional Law I course covers judicial review, federalism, the powers of Congress, executive power, the separation of powers, and the state action doctrine. All three courses are challenging because they require students to address many doctrinal, policy, and interpretive issues. Although each course had approximately 100 students, Sarah stood out because of her great participation in class and her strong performance on the final examinations.

I was so impressed with Sarah that I hired her as an intern/research assistant to assist me with a law review article on early state constitutions. Her research was excellent. And her writing skills are so good that I asked her to proofread and edit the entire article before I sent it out for publication.

Sarah has excellent experience working for a large law firm and on Capitol Hill. She demonstrated her determination and competitive spirit as star varsity soccer player in college. I am confident that Sarah would be an exceptionally diligent, helpful, and trustworthy law clerk.

Sincerely,

A handwritten signature in black ink, reading "Gregory E. Maggs". The signature is written in a cursive style with a large, stylized 'G' and 'M'.

Gregory E. Maggs

Sarah J. Brown

4001 9th St. North, Apt. 601, Arlington, VA 22203 | 585-754-2427 | sjbrown@law.gwu.edu

WRITING SAMPLE

Please see attached for my writing sample. The piece is a legal issue analysis drafted for my Legal Research and Writing Class. The assignment requested a short memo analyzing whether the members of Cold Shoulder, a punk-rock band, will have a valid claim against HSI, Inc. (“HSI”), a punk inspired fashion line, for a violation of their right to privacy under New York Civil Rights Law Section 51 when HSI uses Cold Shoulder’s likeness in a commercial video without Cold Shoulder’s consent.

I. Hot Subject Inc. (“HSI”) will violate Cold Shoulder’s right to privacy under Section 51 of New York Civil Rights Law because of HSI’s non-consensual use of Cold Shoulder’s likeness in a commercial advertisement.

Hot Subject Inc. (“HSI”) will violate Cold Shoulder’s right to privacy under Section 51 of New York Civil Rights Law because of HSI’s non-consensual use of Cold Shoulder’s likeness in a commercial advertisement. Section 51 states that there is a violation of a right to privacy when a defendant uses “(1) name, portrait, picture, or voice, (2) for advertising or trade purposes, (3) without written consent.” *Burck v. Mars, Inc.*, 571 F. Supp. 2d 446, 451 (S.D.N.Y. 2008); *see* N.Y. Civ. Rights Law § 51 (McKinney Supp. 2008). A single commercial use of name, voice, portrait, or picture without consent is sufficient to constitute a privacy violation. *See Onassis v. Christian Dior-New York, Inc.*, 122 Misc. 2d 603, 611 (N.Y. Sup. Ct. 1984). For purposes of privacy liability, a “portrait or picture” includes the intentional conveyance of a person’s likeness and essence. *Id.* at 608; *see also Binns v. Vitagraph Co.*, 103 N.E. 1108, 1110 (N.Y. 1913) (holding violation of privacy when defendants used a model which “was intended to be, and it was, a representation of the plaintiff”). Section A of this analysis addresses HSI’s use of look-a-like models to portray Cold Shoulder without their consent. Section B addresses HSI’s commercial depiction of individual characteristics of Cold Shoulder’s living persons, Syd Viscous and Tim Tatts.

A. HSI will violate Cold Shoulder’s privacy by using look-a-like models, without consent, to intentionally portray that the band is in an advertisement video.

HSI will violate Cold Shoulder’s privacy by using look-a-like models, without the band’s consent, to intentionally portray that the band is in an advertisement video. New York’s Civil Rights Law Section 51 statute states that it is a violation of privacy when the likeness (portrait or picture) of a person is used for advertisement purposes, without consent. *See Burck*, 571 F. Supp. 2d at 451-52. For example, using a look-a-like model in an advertisement

to intentionally portray a recognizable likeness, even without using their name, violates an individual's privacy under Section 51. *See Onassis*, 122 Misc. 2d at 611-12 (Jackie Kennedy Onassis' privacy was violated when she denied consent for a look-a-like model to portray her in an advertisement where her name did not appear). To constitute a privacy violation, the likeness need not be an identical replica of actual person but need only be a "close and purposeful resemblance" of actual person. *Id*; *cf. Burck*, 571 F. Supp. 2d at 454 (finding that there was no violation of privacy because defendant made no effort to copy likeness of plaintiff himself). Additionally, if the close and purposeful likeness creates the illusion that the actual person is present, there is a violation of Section 51. *See Onassis*, 122 Misc. 2d at 612 (finding that if use of likeness permitted, the illusion of Jackie Kennedy Onassis in a commercial would create a loophole in Section 51 because illusion achieves the same effect as the original person); *Binns*, 103 N.E. at 1110 (finding a privacy violation under Section 51 when an actor was made "to look like and impersonate the plaintiff" in order to create the illusion of plaintiff in a motion picture).

Here, though HSI's proposed advertisement video will have no recorded sound (voice) and will not use Cold Shoulder's name, HSI will be in violation of Cold Shoulder's right to privacy by using their portrait/picture. Additionally, there is no dispute that HSI will be using their video for advertisement purposes and without Cold Shoulder's consent. Cold Shoulder responded to HSI's inquiry for consent by stating that they are averse to the "commercialization of punk" and that their policy is to never "sell out to any corporations looking to profit off [their] music." Here, HSI's proposal to hire actors with physical characteristics that are unique to Syd Viscous and Tim Tatts of Cold Shoulder constitutes the use of likeness of the band without their consent. The musicians are specifically known to the public by their attention-grabbing style and physical appearances. HSI plans on hiring actors of similar height and build to the band in order

to create a close and purposeful resemblance. Tatts, a 5'6" male, will be portrayed by a male actor of a height between 5'2" - 5'7" tall. Viscous is nearly 6'0" tall and identifies as gender non-binary (birth sex is unknown) and will be portrayed in the advertisement by a female actor between 5'10" – 6'1" tall. A tall female is especially noticeable and if the public thinks of the six-foot Viscous as female then the video's use of a tall female actor will make the physical appearance more alluding to Viscous and more likely that the public will recognize the actor as the true Viscous. If the public does not view Viscous as either male or female, then HSI's plan to restrain from close-up shots of the female model will be sufficient to dilute attention from the exact gender of the actor.

Even if the female actor is not identical, she will still create the illusion of the musician. The actors are required to wear hair in the same style as Viscous, spiked Mohawk, and Tatts, long black hair. An eagle and a lion tattoo will be applied to the actors respectively to portray the similar tattoos of a raven, worn by Viscous, and a tiger, worn by Tatts. HSI will be making some physical changes from the signature appearances of the Cold Shoulder duo — such as tattoo color, shape, and placement, and hair colors/patterns; however, HSI is attempting to purposefully resemble the most notable physical commodities of Viscous and Tatts by portraying a recognizable version of the distinct tattoos, hair styles, and physical heights of the individuals. Even if not identical, HSI's purposeful attempt to resemble the look of Cold Shoulder will create the illusion that the band is in the advertisement. As noted, the promotional video will even refrain from showing any closeup shots of the models' faces so as to strengthen the illusion that Cold Shoulder is performing.

Like in *Onassis*, where the defendants knew that Jackie Kennedy would not give consent to their commercial because Jackie “never permitted her name or picture to be used in connection with the promotion of commercial products,” 122 Misc. 2d at 605-06, here HSI knew

that they did not have consent when Cold Shoulder denied permission for use of their likeness because they do not support the commercialization of their music. Additionally, in *Onassis*, Christian Dior violated Kennedy's right to privacy when they created the illusion of Jackie in an advertisement after they reached out to a celebrity look-a-like model agency and purposefully used a look-a-like actor who resembled Jackie's physically well-known features. *Id.* Here, HSI will violate Cold Shoulder's right to privacy when they create the illusion that the band is performing in their advertisement after they purposefully requested that their talent agency, Famous Faces, obtain individuals with the same "vibe" and recognizable physical characteristics as Viscous and Tatts. Furthermore, as in *Binns*, where the court found violation of privacy when the defendant used the name and likeness of plaintiff, without consent, in order to market and increase business, 103 N.E. at 1110, here, HSI will be using the likeness of Cold Shoulder in their advertisement, without consent, in order to market and increase business of a new vegan jean line, thus, violating Cold Shoulder's right to privacy.

Because HSI will be purposefully creating the illusion of Cold Shoulder in their advertisement by using look-a-like models to portray the recognizable likeness and essence of the band, knowingly disregarding the band's non-consent, HSI will be violating Cold Shoulder's right to privacy under New York Civil Rights Law Section 51.

B. HSI's advertisement video will violate Cold Shoulder's right to privacy, under New York Civil Rights Law, because the duo is made up of living-persons and not just characters created for a performance.

HSI's advertisement video will violate Cold Shoulder's right to privacy, under New York Civil Rights Law, because the duo is made up of living-persons and not just characters created for a performance. A violation of privacy occurs when the likeness used without consent and for advertisement purposes is of a living person identifiable by the public. *See Burck*, 571 F. Supp. 2d at 448-49, 458 (New York Civil Rights Law "[s]ection 51 protects 'any person,'

and section 50 limits the statutory protection to ‘any living person’); *Lombardo v. Dane & Bernbach, Inc.*, 58 A.D.2d 620, 621 (N.Y. App. Div. 1977) (New York Law Section 50 and 51 statutes “protect living persons from commercial exploitation of their names and pictures without their written consents”). For example, the purposeful likeness portrayed must be of a living person and not just a character or personality performed by a living person. *See Burck*, 571 F. Supp. 2d at 446 (holding M&M Candy did not violate privacy when it portrayed, in a cartoon commercial, the likeness of a cowboy character but did not portray physical likeness of the living-person who played the cowboy); *Lombardo*, 58 A.D.2d at 622 (Section 51 is not to “prohibit the portrayal of an individual's personality or style of performance”). Additionally, the nature and context of the character representation must create an illusion that is reasonably understood by the public to be the living-person. *See Lombardo*, 58 A.D.2d at 622-23 (holding no privacy violation when commercial depicted band leader’s characteristic hand-movements but used an actor who did not physically resemble plaintiff nor who would be reasonably identified by public as the plaintiff).

Here, HSI is not just portraying the characteristic and personality of Cold Shoulder’s musical performance but will be purposefully portraying the living-persons of the band. Cold Shoulder, in addition to their appearance, is known for their distinctive movements, combining kicks, jumps, and crawls while they are performing. HSI filming the look-a-like actors in a performance context — kicking, jumping, and crawling in vegan leather pants — creates the full illusion, to be reasonably understood by the public, that the actors are the real Cold Shoulder band and are not just imitators replicating the movements of a Cold Shoulder performance. HSI could argue that Viscous and Tatts are performers and that replicating their appearance is simply a use of performance characteristics and public-personalities and, thus, does not result in a violation of privacy. However, Viscous and Tatts are living persons and their distinctive

appearances were established before forming the characteristic and personality of the Cold Shoulder band — they are known to the public for more than just their on-stage performances.

In contrast to *Lombardo*, where the court found no violation of privacy when the defendant copied a 40-year, musical public-personality, but did not attempt to create an illusion for the public that the actor was the plaintiff, 58 A.D.2d at 622; here, to create the illusion that the band is in the video, HSI will be copying the public-personalities of Viscous and Tatts in their musical performance context as well as using the publicly-identifiable physical characteristics that make up their living persons, thus, violating Cold Shoulder’s right to privacy. As in *Onassis*, where Christian Dior violated Jackie Kennedy Onassis’ privacy when their advertisement persuaded the public that their product was “legendary” and chic based off of the illusion that the sophisticated and elite living-person, Jackie Kennedy Onassis, was participating in their marketing campaign, 122 Misc. 2d at 605; here, the advertisement will persuade the public that HSI’s product is vegan-approved based off of the illusion that Cold Shoulder — living musicians who are rarely photographed without wearing vegan leather pants, are outspoken vegans, and are well-known in the animal rights community — is portrayed in the video with HSI’s vegan leather pants, and thus, will result in a violation of privacy.

Because HSI’s video will use the band’s performing characteristics along with the distinctive likeness and essence of Cold Shoulder’s living-persons identifiable by the public, for commercial purposes and without the band’s consent, HSI will be in violation of Section 51 of New York Civil Rights Law. For the above stated reasons, Cold Shoulder will have a valid claim against HSI for a violation of their right to privacy.

Applicant Details

| | |
|----------------------|--|
| First Name | Brayden |
| Last Name | Bui |
| Citizenship Status | U. S. Citizen |
| Email Address | braydenbui93@gmail.com |
| Address | <div> <div>Address</div> <div> <div>Street</div> <div>284 Lafayette St.</div> <div>City</div> <div>Newark</div> <div>State/Territory</div> <div>New Jersey</div> <div>Zip</div> <div>07105</div> <div>Country</div> <div>United States</div> </div> </div> |
| Contact Phone Number | 408-772-6210 |

Applicant Education

| | |
|--|---|
| BA/BS From | University of California-Davis |
| Date of BA/BS | May 2016 |
| JD/LLB From | Seton Hall University School of Law |
| | https://law.shu.edu |
| Date of JD/LLB | May 21, 2020 |
| Class Rank | Below 50% |
| Does the law school have a Law Review/Journal? | No |
| Law Review/Journal | No |
| Moot Court Experience | No |

Bar Admission

Prior Judicial Experience

| | |
|----------------------------------|-----|
| Judicial Internships/Externships | Yes |
|----------------------------------|-----|

Post-graduate Judicial Law Clerk Yes

Specialized Work Experience

Recommenders

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References

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Email: durkinlaw@gmail.com or dadurkin@durkinlaw.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Brayden Bui284 Lafayette St., Unit 3 | Newark, NJ 07105 | (408) 772-6210 | Brayden.t.bui@gmail.com

April 25, 2021

The Honorable Elizabeth W. Hanes
 Walter E. Hoffman United States Courthouse
 600 Granby Street
 Norfolk, VA 23510

Dear Judge Hanes:

I am a Seton Hall University School of Law graduate and seeking a clerkship in your chambers for the 2022-2024 term. As a first-generation college graduate and immigrant from Vietnam, by virtue of my grandfather risking his life crossing the Pacific Ocean by boat as a political refugee after enduring reeducation camp for eight years after the fall of Saigon, I learned to appreciate every opportunity available because my forefathers never had their chance. Therefore, I want to seize this opportunity to clerk in your chambers because I believe that clerking will expose me to varieties of law, along with the challenges and opportunities for professional growth that a clerkship offers. And I want to utilize this chance to have a positive effect on an individual's life—however slight.

Currently for 2020-2021 court term, I am clerking for The Honorable Martha T. Mainor, J.S.C. My duties include assisting Judge Mainor with her daily calendar, writing memoranda of law, advising her on the law with bench memoranda, and case law research. Fortunately, Judge Mainor loves to teach. She acknowledges my questions, my concerns, and—most importantly—my opinions. Under her mentorship, I will continue to develop a strong skill set and familiarity with chambers prior to clerking at the Federal Magistrate Court. Additionally, to expedite my growth, I am also helping other judges within the vicinage with their cases. Apart from being able to learn from other judges' unique perspectives and writing styles, I am also improving my communication, organizational, and interpersonal skills. Moreover, I am also exposed to more advocates and learn from their trial experience. This builds on the experience I was fortunate to have during law school. Before my clerkship, I interned for The Honorable Steven C. Mannion, U.S.M.J., where I submitted an opinion to the court; and I externed for The Honorable Thomas Moore, J.S.C., where I submitted many memoranda and had one read into the record.

In addition to externing with the judiciary, I gained trial experience by representing clients during my summer at Albert & Mackenzie, LLP. There, I attended depositions, negotiated with adversaries, and appeared in front of a judge. Furthermore, I submitted a preliminary injunction to the court in a mortgage fraud case through the Civil Litigation and Practice Clinic at the Center for Social Justice at Seton Hall Law. Moreover, I am accustomed to reading hundreds of pages of documents, researching different fields of law, and becoming an expert to represent my clients competently. As their zealous advocate, I have learned to produce high-quality work products that are efficient, powerful, and persuasive. These experiences have allowed me to hone my writing and analytical skills, which will be beneficial as I work for the court in an effective manner.

I am confident my diligence, maturity, and energy would allow me to succeed as your law clerk. Moreover, I am excited about the possibility of utilizing the legal skills I have developed from my experiences thus far and equally excited at the prospect of expanding upon these abilities as a law clerk in your chambers. Finally, I am willing to intern for your chamber when my current clerkship ends until the start of the 2022 term. This interning period will provide sufficient time for me to adjust to Your Honor's chamber's culture, thus reducing the transition period. I hope to have the opportunity to discuss my qualifications with you, and I look forward to hearing from you.

Respectfully,

Brayden Bui

Brayden Bui

284 Lafayette St., Unit 3 | Newark, NJ 07105 | (408) 772-6210 | Brayden.t.bui@gmail.com

EDUCATION

Seton Hall University School of Law, Newark, NJ, May 2020

Activity: Bankruptcy Intake Clinic for Volunteer Lawyers for Justice (VLJ);
Secretary for Immigration Law Society

University of California, Davis, Davis, CA

Bachelor of Arts in Political Science, Minor in Philosophy, 2016

EXPERIENCE

The Honorable Martha T. Mainor

Superior Court of New Jersey, Law Division, Family Part, Jersey City, NJ

Judicial Law Clerk, August 2020 – August 2021

The Honorable Steven C. Mannion

United States District Court for the District of New Jersey, Newark, NJ

Judicial Intern, January 2020 – May 2020

- Assisted with court procedures; observed Rule 16, conferences and arguments; participated in case discussions with the Judge.
- Drafted multiple memoranda on a wide variety of topics and cases; prepared an unpublished opinion.

Seton Hall Law Civil Litigation and Practice Clinic, Newark, NJ

Student Attorney, January 2020 – May 2020

- Represented a client with a mortgage fraud case under the supervision of Professor Fisher.
- Wrote a Preliminary Injunction that was submitted to the Civil Division of New Jersey.

Seton Hall Law Southern District of New York Representation in Mediation Practicum Clinic, Newark, NJ

Student Attorney, August 2019 – December 2019

- Represented client in mediation for her employment matter, reviewed over 100 pages of documents, and negotiating a settlement agreement, despite the client having signed a Waiver of Discharge and accepted her benefits.

Albert & Mackenzie, LLP, Concord, CA

Law Clerk/ Hearing Representative, May 2019 – August 2019

May 2019 – August 2019

- Read and interpreted hundreds of pages of document; helped prepare for depositions; observed trials and hearings
- Interviewed and negotiated with employers and clients; assisted with negotiating settlements
- Helped managing partner draft an article: “Does Hikida Create a Change in The Law of Apportionment?”

Seton Hall University School of Law, Newark, NJ

Research Assistant to Professor Paula Franzese, January 2019 – May 2019

- Assisted with project: “Renovation as Elimination: How the Pretext of Renovation Constructively Evicts Rent-Controlled Tenants”; performed extensive research on rent-control and rent-stabilization throughout the country

Law Offices of Dennis A. Durkin, Sr., Roseland, NJ

Law Clerk, August 2018 – October 2018; January 2019 – April 2019

- Drafted various legal documents, including complaints against corporations and municipalities; motions for summary judgment, dismissal, and reconsideration; opinion status letters for clients; and transmittal letters for clients, doctors and opposing counsel

The Honorable Thomas M. Moore

Superior Court of New Jersey, Chancery Division, General Equity Part, Newark, NJ

Judicial Extern, June 2018 – July 2018

- Performed legal research and drafted memoranda on topics including foreclosures, sheriff sales, and motions
- Observed courtroom proceedings, such as motion hearings and foreclosure trials, as well as pretrial conferences

U.S. Department of Housing and Urban Development (HUD), Newark, NJ

Legal Intern, January 2018 – March 2018

- Assisted attorneys in researching laws the Fair Housing Act; Worked on ESA and housing discrimination cases

Morgan, Lewis & Bockius, LLP, Palo Alto, CA

Information Governance and Records Management Clerk, January 2017 – May 2017

6/15/2020

Academic Transcript



11504478 Brayden T. Bui
Jun 15, 2020 03:57 pm

UNOFFICIAL TRANSCRIPT

[Institution Credit](#) [Transcript Totals](#)

Transcript Data

STUDENT INFORMATION

Name : Brayden T. Bui

Curriculum Information

Primary Program

Juris Doctor

Major and Department: Law, Law

***Transcript type:Official Transcript is NOT Official ***

DEGREE AWARDED

Unawarded: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree

College: Law School

Major: Law

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Institution: | 88.000 | 88.000 | 88.000 | 60.000 | 174.420 | 2.907 |

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2017

Academic Standing: —

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|-------------------------------|-------|--------------|----------------|---|
| LAW | 5050 | PR | Intro Lawyering I-Lgl Rs Wrtg | B | 2.000 | 6.000 | |
| LAW | 6000 | PR | Legal Analysis and Methods | P | 1.000 | 0.000 | |
| LAW | 6001 | PR | Civil Procedure I | A | 3.000 | 12.000 | |
| LAW | 6005 | PR | Contracts | C | 5.000 | 10.000 | |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-----|
| Current Term: | | | | | | |

6/15/2020

Academic Transcript

| | | | | | |
|--------|--------|--------|--------|--------|-------|
| 11.000 | 11.000 | 11.000 | 10.000 | 28.000 | 2.800 |
|--------|--------|--------|--------|--------|-------|

Cumulative:

| | | | | | |
|--------|--------|--------|--------|--------|-------|
| 11.000 | 11.000 | 11.000 | 10.000 | 28.000 | 2.800 |
|--------|--------|--------|--------|--------|-------|

Unofficial Transcript

Term: Spring 2018

Academic Standing:

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|--------------------------------|-------|--------------|----------------|---|
| LAW | 5051 | PR | Intro Lawyering II-Lgl Rs Wrtg | B | 2.000 | 6.000 | |
| LAW | 5052 | PR | Intro to Lawyering-Interact Sk | P | 2.000 | 0.000 | |
| LAW | 6002 | PR | Civil Procedure II | C | 2.000 | 4.000 | |
| LAW | 6014 | PR | Criminal Law | B- | 3.000 | 8.010 | |
| LAW | 6016 | PR | Property | C | 5.000 | 10.000 | |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Current Term: | 14.000 | 14.000 | 14.000 | 12.000 | 28.010 | 2.334 |
| Cumulative: | 25.000 | 25.000 | 25.000 | 22.000 | 56.010 | 2.546 |

Unofficial Transcript

Term: Summer 2018

Academic Standing:

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|--------------------------------|-------|--------------|----------------|---|
| CORP | 7125 | PR | Financial Concepts for Lawyers | P | 1.000 | 0.000 | |
| EXTN | 9161 | PR | Judicial Externship | P | 2.000 | 0.000 | |
| PUBR | 7904 | PR | Consumer Law | B- | 2.000 | 5.340 | |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Current Term: | 5.000 | 5.000 | 5.000 | 2.000 | 5.340 | 2.670 |
| Cumulative: | 30.000 | 30.000 | 30.000 | 24.000 | 61.350 | 2.556 |

Unofficial Transcript

Term: Fall 2018

Academic Standing:

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|---------|-------|--------------|----------------|---|
| LAW | 6008 | PR | Torts I | A- | 4.000 | 14.680 | |

6/15/2020

Academic Transcript

| | | | | | | |
|------|------|----|--------------------|----|-------|--------|
| LAW | 6015 | PR | Constitutional Law | B- | 5.000 | 13.350 |
| PRMD | 7201 | PR | Evidence | B- | 3.000 | 8.010 |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Current Term: | 12.000 | 12.000 | 12.000 | 12.000 | 36.040 | 3.003 |
| Cumulative: | 42.000 | 42.000 | 42.000 | 36.000 | 97.390 | 2.705 |

Unofficial Transcript

Term: Spring 2019

Academic Standing:

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------------|---------------------------------|-------|--------------|----------------|---|
| CORP | 7131 | PR Business Associations | A- | 4.000 | 14.680 | |
| HIPH | 7504 | PR Professional Responsibility | A- | 2.000 | 7.340 | |
| LABR | 8103 | PR Employment Discrimination | C | 3.000 | 6.000 | |
| MTCT | 7151 | PR Appellate Advocacy | C | 2.000 | 4.000 | |
| PRMD | 8209 | PR Dispute Resolution Processes | P | 2.000 | 0.000 | |
| PRMD | 8210 | PR Persuasion and Advocacy | P | 2.000 | 0.000 | |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Current Term: | 15.000 | 15.000 | 15.000 | 11.000 | 32.020 | 2.911 |
| Cumulative: | 57.000 | 57.000 | 57.000 | 47.000 | 129.410 | 2.753 |

Unofficial Transcript

Term: Fall 2019

Academic Standing:

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------------|---------------------------------|-------|--------------|----------------|---|
| COML | 7125 | PR Secured Transactions | A- | 3.000 | 11.010 | |
| CRJU | 7401 | PR Crim Pro-Inv-Arr and Counsel | A | 4.000 | 16.000 | |
| HLTH | 9515 | PR Public Health Law | B | 3.000 | 9.000 | |
| PRMD | 8201 | PR Remedies | B | 3.000 | 9.000 | |
| PRMD | 9235 | PR SDNY Rep Mediation Practicum | P | 2.000 | 0.000 | |

Term Totals (Professional)

Attempt Passed Earned GPA Quality GPA

https://myaccount.shu.edu:4446/PROD/bwskotrnl_P_ViewTran

3/4

6/15/2020

Academic Transcript

| | Hours | Hours | Hours | Hours | Points | |
|----------------------|--------|--------|--------|--------|---------|-------|
| Current Term: | 15.000 | 15.000 | 15.000 | 13.000 | 45.010 | 3.462 |
| Cumulative: | 72.000 | 72.000 | 72.000 | 60.000 | 174.420 | 2.907 |

Unofficial Transcript

Term: Spring 2020

Term Comments: *Pass/D/Fail grading adopted in connection with COVID-19

Academic Standing: —

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|--------------------------------|-------|--------------|----------------|---|
| CLIN | 7180 | PR | Civil Litigation and Prac Clin | P | 4.000 | 0.000 | |
| CLIN | 7181 | PR | Civil Litigation and Prac Clin | P | 1.000 | 0.000 | |
| PRMD | 7203 | PR | Federal Courts | P | 3.000 | 0.000 | |
| PRMD | 8250 | PR | Applied Analytical Skills | P | 2.000 | 0.000 | |
| PRMD | 9270 | PR | Advanced Legal Research | P | 2.000 | 0.000 | |
| PROP | 7701 | PR | Wills, Trusts & Estates | P | 4.000 | 0.000 | |

Term Totals (Professional)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Current Term: | 16.000 | 16.000 | 16.000 | 0.000 | 0.000 | 0.000 |
| Cumulative: | 88.000 | 88.000 | 88.000 | 60.000 | 174.420 | 2.907 |

Unofficial Transcript

TRANSCRIPT TOTALS (PROFESSIONAL) -Top-

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---------------------------|---------------|--------------|--------------|-----------|----------------|-------|
| Total Institution: | 88.000 | 88.000 | 88.000 | 60.000 | 174.420 | 2.907 |
| Total Transfer: | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| Overall: | 88.000 | 88.000 | 88.000 | 60.000 | 174.420 | 2.907 |

Unofficial Transcript

RELEASE: 8.7.1

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SCHOOL OF LAW

Seton Hall
University

One Newark Center, Newark, New Jersey 07102-5210

Kristen Boon

*Associate Dean for Faculty Research
and Development and Professor of Law*

E-mail: Kristen.Boon@shu.edu

March 9, 2020

Dear Judge:

I am writing to enthusiastically recommend Brayden Bui for a clerkship in your chambers. Brayden is a wonderful student, a terrific writer, and a diligent worker. You will not be disappointed if you hire him.

Brayden was a student in my Contracts class in the Fall 2017 semester. I was immediately impressed by his intelligence, his professional demeanor, and his likeable personality. He is an extremely hard worker: he was always prepared for class and came regularly to talk to me during my office hours to ensure he was mastering concepts we covered in class. He has developed a firm grasp of the relevant doctrines and has produced thoughtful and well-written work. He is particularly interested in labor and employment law and would like to obtain relevant experience through a judicial clerkship before joining a firm.

I know Brayden will do very well as a clerk. He is attentive, intelligent, independent, and he is curious about the law. As his CV demonstrates, he has experience working in law offices, as a clerk, a research assistant, and in a mediation clinic. Brayden has excelled in these positions and is amassing considerable practical skill.

I should add that, in addition to his qualifications as a student and a writer, Brayden is an all-around great guy. He is very personable, interesting, and easy to get along with. He is also incredibly considerate and respectful. Having clerked for a judge myself, I know the importance of good chemistry among clerks. And I can say without reservation that Brayden would be a terrific addition to any chambers.

If I can be of further assistance, please do not hesitate to contact me.

Respectfully,

Kristen Boon

Kristen Boon



SCHOOL OF LAW

Seton Hall
University

One Newark Center, Newark, New Jersey 07102-5210

Paula A. Franzese

Peter W. Rodino Professor of Law

E-mail: paula.franzese@shu.edu

March 9, 2020

Dear Judge:

I am pleased to support the judicial clerkship application of Mr. Brayden Bui. I had the pleasure of having Brayden in my Property class when he was a first year law student at Seton Hall Law School. In that class he was consistently well-prepared and rigorous throughout. His final exam grade did not reflect the extent of his careful preparation and understanding of the subject matter. Still, I thought so highly of Brayden and his abilities that I asked him to serve as my Research Assistant. In that role, he served with great diligence and discernment. He is a meticulous researcher and his work ethic is outstanding.

Since then, Brayden has served as a law clerk in a firm, where he attended court appearances and did research and drafting of various memorandums of law. Last semester, he participated in the S.D.N.Y. Arbitration/Mediation clinic and served as a student attorney with our Civil Litigation Clinic. This semester, he is interning for U.S. Magistrate Judge Steven Mannion.

In sum, Brayden is bright, hard-working, kind and generous. He is a pleasure to work with and he would be an asset to chambers.

Thank you.

Respectfully,

Paula A. Franzese

Paula A. Franzese



SCHOOL OF LAW

Seton Hall
University

One Newark Center, Newark, New Jersey 07102-5210

Mark P. Denbeaux

Professor of Law, and

Director, Center for Policy and Research

E-mail: Mark.Denbeaux@shu.edu

March 9, 2020

Re: Letter of Recommendation for Brayden Bui

Dear Judge:

I know Brayden very well and I am eager to give this reference. He is a student in my Remedies seminar. It is a small class and he is an active participant who is always prepared, curious, interesting and funny.

I have taught at Seton Hall Law School since 1972 and I have been the Director of the Seton Hall Law School Center for Policy and Research since 2004. The Center focuses on fact analysis and pattern identification and a primary focus of the work of the Center is post 9/11 government conduct in the areas of national security, America's torture program, CIA dark sites and Guantanamo, and the methodology of the Center is quite intriguing.

The Center includes a year-long five credit course which often conflicts with students' other schedules. That happened with Brayden, and even though Brayden was unable to enroll in my course because of scheduling conflicts, Brayden nonetheless has been very interested in the issues that we address. Further, Brayden and I talk about them frequently, and Brayden has volunteered to assist with several Center projects. Brayden's work has been and will be very helpful this year, and Brayden has demonstrated his abilities in this kind of fact analysis as well as strong writing and editing skills.

Our Center students wade through thousands of pages of records, usually government records, and then sift through the facts to discover the underlying patterns of often controversial topics. Our investigations often discover that the policies as announced are often different when viewed through the details of how they are implemented. As you might imagine our research is deeply complex and the topics are unusual and extensive to investigate and to report upon. We are pleased to report that our work has been recognized because we are very precise and careful, and much of the Center's work in these controversial areas has been recognized by numerous Senate and House committees and subcommittees. I have been asked to testify before several Senate and House Committees and many of the kinds of reports that Brayden researches and helps with may also be included in the Congressional Record.

Brayden's interest in these issues of National Security also includes attending hearings at Guantanamo Bay as one of the Law School's NGO (non-governmental observer) representatives. I frequently go myself to Guantanamo since I represent two detainees who have been tortured in CIA dark sites and are now detained in Guantanamo.

I strongly endorse Brayden, and ask that you please feel free to contact me if I can assist further.

Yours truly,

Mark P. Denbeaux

Mark P. Denbeaux

WRITING SAMPLE

The attached writing sample is a memorandum for the Honorable Martha T. Mainor, J.S.C. It incorporates organizational suggestions by Judge Mainor, but little to no edits from Her Honor.

SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, FAMILY PART

THE STATE OF NEW JERSEY,

Plaintiff,

v.

KIRK CAMPBELL,

Defendant.

CRIMINAL ACTION

DOCKET NO. 15-09-1224-1 and 16-04-0547-I

PETITION FOR POST CONVICTION
RELIEF FROM A JUDGMENT OF
CONVICTION SUPREIOR COURT OF
NEW JERSEY, LAW DIVISION,
HUDSON COUNTY.

MEMORANDUM

MARTHA T. MAINOR, New Jersey Judge.

Mr. Campbell is petitioning for post-conviction relief (“PCR”) by claiming ineffective assistance of counsel by his trial counsel, Ms. Yuri Aldrich, during his plea and motion to suppress hearing. Mr. Campbell argues that Ms. Aldrich (1) failed to explain the difference between concurrent and consecutive sentencing, (2) pressured him to plead guilty, and (3) failed to call certain witnesses during the motion to suppress hearing. The State opposed the motion by arguing that Mr. Campbell’s claims are contrary to the records in front of Judge Royster, are moot as held by the Appellate Division in Mr. Campbell’s appeal, and are unconvincing and speculative. After reviewing the submissions from the parties. I recommend to the court that Mr. Campbell’s motion be **DENIED**.

PROCEDURAL HISTORY

The Hudson County Grand Jury charged Defendant-Petitioner, Kirk Campbell, with twenty-four counts in Indictment No. 15-09-1224. *Def. 's Brief* at 1. Mr. Campbell pleaded guilty to Count Five, first degree endangering the welfare of a child, contrary to the provisions set forth in N.J.S.A. 2C:24-4B (3); Count Seventeen, first degree endangering the welfare of a child, contrary to the provisions set forth in N.J.S.A. 2C:24-4B (3); and Count Twenty-Three, third degree endangering the welfare of a child, contrary to the provisions set forth in N.J.S.A. 2C-24-4B. *Id.* at 1-3. Additionally, Mr. Campbell pleaded guilty to one count of second degree endangering the welfare of a child under Indictment No. 16-04-547. *Id.* at 4. The statutory maximum sentence for all four counts is 55 years. *Dpa*8. At the plea hearing, Judge Royster sentenced Mr. Campbell to an aggregate term of 25 years with an 85% period of parole ineligibility and an order of Megan's law. *Def. 's Brief* at 4. Mr. Campbell appealed and the New Jersey Superior Court, Appellate Division affirmed the sentence. *Ibid.* Mr. Campbell then appealed to the New Jersey Supreme Court and was denied certiorari. *Id.* at 5. Soon after, Mr. Campbell filed a pre so petition for PCR. *Ibid.* There, he alleged that the court had violated the terms of his plea agreement. *Dpa*62. Counsel was thereafter assigned to represent Mr. Campbell in this matter. *Def. 's Brief* at 5.

STATEMENT OF FACTS

The facts in this case are discussed in detail in Mr. Campbell's brief. However, this memorandum will only recite the facts relevant to this appeal.

Mr. Campbell's girlfriend, J.C., arrived at the Jersey City Police Department and reported that she found lewd photographs and videos of sexual acts involving a two or three-year-old girl in Mr. Campbell's cellphone. *Id.* at 6. Specifically, J.C. observed photographs and videos of Mr.

Campbell undressing his roommate's niece, who was between two to four years old, and fondling her buttocks and touching her vagina. *Ibid.*

Thereafter, Lt. Spirito ordered Sergeant Nerney and four other officers to Mr. Campbell's apartment. *Id.* at 7. They wanted to secure him and protect the children currently residing in that residence. *Ibid.* There, Mr. Campbell lived with his two sons and roommate, L.G. *Ibid.* Although disputed as to who invited the officers into the apartment, they entered the apartment, explained the allegations, and requested both Mr. Campbell and L.G. to come to the police station. *Id.* at 7-8. Both Mr. Campbell and L.G. agreed. *Id.* at 8. Mr. Campbell then asked if he could retrieve some clothing. *Ibid.* Officer Shaver followed him into his bedroom. *Ibid.* Once inside, Mr. Campbell stated that the officers needed a search warrant and attempted to close the door behind him. *Ibid.* However, Officer Shaver prevented him from doing so. *Ibid.*

Mr. Campbell then voluntarily stepped outside of his room. *Ibid.* After he was handcuffed, Mr. Campbell was taken into the hallway where he requested for his jacket in his room. *Ibid.* Officer Shaver obliged and searched the jacket before handing it to Mr. Campbell. *Ibid.* There, Officer Shaver found a cellphone in the pocket. *Ibid.* Once at the station, Lt. Spirito applied for a search warrant for the cellphone and an arrest warrant for Mr. Campbell. *Id.* at 10. Soon after, J.C. provided the officers with the passcode to the cellphone. *Id.* at 11. The cellphone was unlocked and set on airplane mode. *Ibid.*

Mr. Campbell pleaded to Counts Five, Seventeen, and Twenty-Three. *Id.* at 13. As to Count Five, Mr. Campbell confessed that he used his cellphone to record videos of his roommate's three-year old niece, A.R., without clothing for his own sexual gratification. *Ibid.* As to Count Seventeen, Mr. Campbell confessed that he used his cellphone to record videos of six-year-old S.G. without clothing for his own sexual gratification. *Ibid.* As to Count Twenty-Three,

Mr. Campbell confessed that he possessed numerous child pornographic photographs throughout 2015. *Ibid.* Regarding Indictment No. 16-04-547, Mr. Campbell admitted that he intended to distribute the child pornography pictures to others via the internet throughout 2015. *Ibid.*

During the plea hearing, Mr. Campbell confirmed that he was a U.S. Citizen, was thinking clearly and freely, and—even though he was taking medications—was aware of what was taking place around him. *Ibid.* Mr. Campbell also admitted that he had enough time to speak to Ms. Aldrich, that she had reviewed discovery with him, and that she had answered all of his questions. *Id.* at 14. Mr. Campbell affirmed that he was satisfied with Ms. Aldrich’s services. *Ibid.* Mr. Campbell further affirmed he understood that he was waiving various rights by pleading guilty, including the right to a jury trial, the right to present witnesses, and the right to confront witnesses against him. *Ibid.* When Judge Royster asked whether anyone had forced or pressured him to pleading guilty, Mr. Campbell denied experiencing any pressure from anyone but only felt pressure and stress from the whole situation. *Ibid.*

THE COURT: Has anybody forced you, threatened you, promised you anything to make you plead guilty?

DEFENDANT: No. A lot of pressure, but nobody forced me.

THE COURT: But it’s a lot of pressure because it’s a hard decision to make. But did anybody pressure you, force you, or threaten you to make a decision?

DEFENDANT: No.

THE COURT: Okay. So the pressure came from yourself and the fact that this is a difficult thing, or did someone else pressure you?

DEFENDANT: The pressure from the whole situation.

THE COURT: Okay.

DEFENDANT: Just the whole situation.

THE COURT: It’s just a stressful situation?

DEFENDANT: Yes, it’s stressful.

THE COURT: But nobody’s pressured you, forced you, or threatened you to plead guilty?

DEFENDANT: No. Nobody’s forced me to do anything.

THE COURT: Okay. Great. All right.

(5T7-5 to 7-24).

Continuing, Mr. Campbell assured that he heard and understood the charges against him, the charges to which he was pleading guilty, and the penalties to be imposed. *Id.* at 15. He further stated he understood the plea forms and signed them voluntarily. *Ibid.* Regarding the sentence to be imposed, the court explained the plea agreement as follows:

THE COURT: Okay. The State has agreed to recommend in exchange for your plea to those four Counts all the mandatory fines and penalties that I've just explained to you, as well as the following prison sentence:
 On the Count five, first degree endangering, 15 years with 85 percent pursuant to N.E.R.A., with Megan's Law registration, parole supervision for life, and Avenel evaluation, a Nicole's Law restraining order, and that's it on that charge.
 On Count seventeen, endangering first degree, 10 with 85 percent, with Megan's Law, PSL, Avenel, Nicole's Law restraining order. And that sentence runs consecutive to the first one. However, concurrent to the third.
 Count twenty-three, third degree endangering, a five flat New Jersey State Prison concurrent to Count one on the separate Indictment, second degree endangering, in exchange for a five flat. (5T11-8 to 11-25).

THE COURT: So, in essence, sir, you're gonna serve a 15 with 85 percent. On a 15 with 85 percent you have to serve 12 years, 9 months, and 3 days before you're eligible for parole, minus the time that you've already served.

Once you finished serving that sentence then you will begin serving the 10-year with 85 percent which requires you to serve 8 years, 6 months, 2 days. That sentence will run concurrent to the five flat on the endangering third degree, and five flat on the endangering second degree, which means that the two five flats will basically disappear into the 10 with 85 percent because it's concurrent and the -- you'll be serving more than the five flat on the 10 with 85 percent sentence. You understand that?

DEFENDANT: Yes.

THE COURT: Okay. And so you will be subject, upon your release, to Megan's Law, PSL, Avenel, Nicole's Law restraining order. Has your attorney discussed with you each of those things?

DEFENDANT: Yes.

THE COURT: Okay. Thank you, very much. The balance of each of the Indictments will be dismissed against you. (5T12-16 to 13-15).

THE COURT: Okay. You understand your attorney can ask for a lesser sentence at the time, but the decision will be up to the Court based on what I review and what I'm satisfied was appropriate. You understand that?
 DEFENDANT: That I understand.
 (5T14-6 to 14-11).

Mr. Campbell arguing that the cellphone was unlawfully obtained and must be suppressed, and his sentence was excessive. *Id.* at 16. The Appellate Division rejected both arguments. *Ibid.* The Appellate Division explained that there was consent to enter the apartment, and the officers entered the apartment, not to search, but to secure the evidence from being destroyed. *Ibid.* Further, the Appellate Division concurred with the trial court's explanation that the officers correctly arrested Mr. Campbell because he was obstructing the investigation. *Id.* at 12. Moreover, the officers searched the cellphone as incident to an arrest. *Ibid.* Thus, the officers lawfully seized the cellphone. *Ibid.* Finally, while setting the phone on airplane mode was unlawful, it did not produce any information. *Id.* at 18. Therefore, it was not subject to suppression. *Ibid.*

ANALYSIS AND DISCUSSION

“[PCR] is New Jersey's analogue to the federal writ of habeas corpus,” and is subject to R. 3:22 et al. *State v. Preciose*, 129 N.J. 451, 459 (1992). PCR is neither a substitution for direct appeal, nor an opportunity to relitigate the case. *Ibid.* Additionally, petitioners may be procedurally barred under R. 3:22-4 for not raising—even though they could have—a claim in a prior proceeding. *Ibid.* But under New Jersey case law, petitioners are rarely barred from raising ineffective assistance of counsel claims in PCR. *Id.* at 460. To explain, ineffectiveness assistance of counsel claims suit for PCR because they cannot be raised in prior proceedings. *Ibid.*

According to R. 3:22-10, it is with the courts' discretion to hold an evidentiary hearing. *Id.* at 462. However, an ineffective assistance of counsel claim often requires an evidentiary

hearing because the facts often lie outside the trial record and because the attorney's testimony may be required. *Ibid.* For courts to grant an evidentiary hearing, petitioners must establish a prima facie claim supporting the PCR. *Ibid.* Like summary judgment motions, courts should view the facts in the light most favorable to petitioners. *Id.* at 462-463. To establish the prima facie case, petitioners must demonstrate the likelihood of satisfying the Strickland-Cronic-Fritz standard. *Ibid.*

A. THE STRICKLAND-CRONIC-FRITZ STANDARD

To prevail in an ineffective of counsel claim, petitioners must satisfy the two-prong standard set out in *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Cronic*, 466 U.S. 648 (1984). First, petitioners “must show that counsel’s performance was deficient.” *Strickland*, 466 U.S. at 687. Second, petitioners “must show that the deficient performance prejudiced the defense.” *Ibid.* The New Jersey Supreme Court adopted the test in *State v. Fritz*, 105 N.J. 42 (1986). Moreover, the *Strickland* test “applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockart*, 474, U.S. 52, 58 (1985).

a. Mr. Campbell Fails to Establish A Case of Ineffective Assistance of Counsel.

As explained in *Strickland*, the first prong requires showing that counsel made errors so serious that counsel was not functioning as counsel guaranteed. 466 U.S. at 687. Specifically in a guilty plea, petitioners cannot claim ineffective of counsel unless counsel was not reasonably competent and the advice was not within the range of competence demanded of attorneys in criminal cases. *Ibid.* Therefore, petitioners “must show that counsel’s representation fell below an objective standard of reasonableness” under prevailing professional norms *Id.* at 688.

To explain, “[i]n any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” *Ibid.*

So, “[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Id.* at 689. The court must indulge a strong presumption that counsel’s conduct “falls within the wide range of reasonable professional assistance.” *Ibid.* Put differently, petitioner must overcome the presumption that counsel’s decisions were sound under the circumstances. *Ibid.*

On the one hand, the court deciding an ineffectiveness claim “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of the counsel’s conduct.” *Id.* at 690. On the other hand, the petitioner “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Ibid.* Moreover, even if an error by counsel is professionally unreasonable, it “does not warrant setting aside the judgment of criminal proceeding if the error had no effect on the judgment.” *Id.* at 691.

i. Mr. Campbell Understood the Difference Between Concurrent and Consecutive Sentences.

Mr. Campbell claims there was ineffective assistance of counsel because Ms. Aldrich never adequately explained the aggregate sentence he was going to receive after pleading. *Def.’s Brief* at 27. He maintains that he did not understand the difference between concurrent and consecutive sentences and did not understand the shorthand phrases “C/S” and “C/C” used in the plea forms. *Id.* at 28. Further, Mr. Campbell insists that competent counsel would have stated the aggregate prison sentence in the plea agreement; written the 25 years sentence on the plea form; and explained the difference between consecutive and concurrent terms. *Ibid.*

In its reply, the State argues that Mr. Campbell’s submission is replete with bald assertions with no credible evidence. *Pl.’s Brief* at 6. The State further argues that counsel

performed effectively. *Id.* at 7. The State maintains that Mr. Campbell, on record, acknowledged that he understood the plea sentence and understood the terms of the plea agreement. *Ibid.* And Mr. Campbell affirmed that his counsel had answered all his questions. *Ibid.* Therefore, Mr. Campbell cannot insist that his counsel failed to explain the sentence imposed under the plea agreement. *Ibid.*

In *Preciose*, the New Jersey Supreme Court held that counsel's performance was deficient because:

(1) Trial counsel met with defendant on a single occasion for twenty minutes; (2) trial counsel failed to challenge the admissibility of the State's identification procedure; (3) trial counsel sent a substitute attorney to represent defendant on the day of trial, and consequently was absent from negotiations surrounding the plea bargain; (4) both attorneys failed to subpoena witnesses and failed to investigate an alleged alibi witness; (5) the substitute attorney informed defendant that he could receive a maximum sentence of 290 years and advised defendant to plea guilty; and (6) trial counsel advised defendant at the sentencing hearing that defendant could not withdraw his guilty plea. 129 N.J. at 463.

Here, Ms. Aldrich's alleged inactions were not even remotely close to those alleged in *Preciose*. Ms. Aldrich's alleged failure to explain the difference between concurrent and consecutive does not in and of itself makes her services unreasonable under the prevailing professional norms. Further, at the plea hearing, the court questioned Mr. Campbell in detail with regards to the anticipated sentence. To ensure that he would understand, the court broke down the aggregate sentence. The court explained how one sentence would be served first, how the next would be served, and how the final would disappear within the second. Additionally, Mr. Campbell confirmed that he understood the sentence; expressed no concern, shock, or confusion; and did not ask for clarification or raise objections at that time.

THE COURT: So, in essence, sir, you're gonna serve a 15 with 85 percent. On a 15 with 85 percent you have to serve 12 years, 9 months, and 3 days before you're eligible for parole, minus the time that you've already served.

Once you finished serving that sentence then you will begin serving the 10-year with 85 percent sentence, which requires you to serve 8 years, 6 months, 2 days. That sentence will run concurrent to the five flat on the endangering third degree, and five flat on the endangering second degree, which means that the two five flats will basically disappear into the 10 with 85 percent because it's concurrent and the -- you'll be serving more than the five flat on the 10 with 85 percent sentence. **You understand that?**

DEFENDANT: **Yes.**

THE COURT: Okay. And so you will be subject, upon your release, to Megan's Law, PSL, Avenel, Nicole's Law restraining order. **Has your attorney discussed with you each of those things?**

DEFENDANT: **Yes.**

THE COURT: Okay. Thank you, very much. The balance of each of the Indictments will be dismissed against you. (5T11-8 to 11-25) (emphasis added).

THE COURT: Okay. You understand your attorney can ask for a lesser sentence at the time, **but the decision will be up to the Court based on what I review and what I'm satisfied wis appropriate. You understand that?**

DEFENDANT: **That I understand.** (5T14-6 to 14-11) (emphasis added).

In sum, with much affirmation from Mr. Campbell, the court is confident that—at all relevant times—he understood the sentences imposed. This is supported because nowhere in his brief did Mr. Campbell assert that he would not have taken the plea deal had he known the difference between consecutive and concurrent sentences before the plea hearing. Therefore, considering that Ms. Aldrich's alleged failure to explain the difference between concurrent and consecutive sentences does not fall below the prevailing professional norms and that Mr.

Campbell confirmed he understood the sentences imposed, the court finds Mr. Campbell's argument meritless.

ii. There Was No Undue Pressure From Anyone But Mr. Campbell Himself.

Mr. Campbell alleges there was ineffective assistance of counsel because Ms. Aldrich pressured him into pleading guilty. *Def.'s Brief* at 31. Mr. Campbell declares that he wanted to proceed to trial but did not have confidence in Ms. Aldrich. *Ibid.* He contends that Ms. Aldrich never presented any trial strategy or possible defenses that would be presented to a jury. *Id.* at 32. Instead, Ms. Aldrich pressured him to plead as his only option. *Ibid.*

The State argues that Mr. Campbell's claim that Ms. Aldrich pressured him to plead guilty contradicted the record. *Pl.'s Brief* at 8. The State cited the transcripts where Mr. Campbell admitted that no one had pressured him to plead guilty. *Ibid.* Therefore, any claims by Mr. Campbell are bald assertions. *Ibid.*

As held in *State v. DiFrisco*, the touchstone of any guilty plea is that it is voluntarily made by the defendant. 137 N.J. 434, 452 (1994). Additionally "a defendant who pleads guilty upon the advice of counsel 'may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel'" "was not within the range of competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56-57. Here, the court believes that Ms. Aldrich recommending a plea deal for Mr. Campbell is within the range of competence by a criminal law attorney. Furthermore, Mr. Campbell affirmed that he voluntarily accepted the plea deal without anyone pressuring or threatening him. To clarify, the court had asked Mr. Campbell to describe the pressure that he felt. Mr. Campbell explained that he felt pressure from the whole situation, not from any individual. He further explained that he was

stressed from the whole situation. Finally, Mr. Campbell confirmed that no one had forced him to plead guilty.

THE COURT: Has anybody forced you, threatened you, promised you anything to make you plead guilty?

DEFENDANT: **No. A lot of pressure, but nobody forced me.**

THE COURT: But it's a lot of pressure because it's a hard decision to make. **But did anybody pressure you, force you, or threaten you to make a decision?**

DEFENDANT: **No.**

THE COURT: Okay. So the pressure came from yourself and the fact that this is a difficult thing, or **did someone else pressure you?**

DEFENDANT: **The pressure from the whole situation.**

THE COURT: Okay.

DEFENDANT: Just the whole situation.

THE COURT: It's just a stressful situation?

DEFENDANT: Yes, it's stressful.

THE COURT: **But nobody's pressured you, forced you, or threatened you to plead guilty?**

DEFENDANT: **No. Nobody's forced me to do anything.**

THE COURT: Okay. Great. All right.

(5T7-5 to 7-24) (emphasis added).

In sum, the court finds that Ms. Aldrich was acting within the range of competence of a criminal law attorney. The court is also satisfied with Mr. Campbell's affirmation that he voluntarily decided to plead guilty. The court believes Mr. Campbell's testimony because he attempted to describe the source of his pressure, which he then explained was stress from the whole situation. For these reasons, the court finds Mr. Campbell's argument meritless.

iii. **Mr. Campbell's Suggestion That Witnesses Will Testify For Him Is Too Speculative.**

Mr. Campbell argues there was ineffective assistance of counsel because Ms. Aldrich failed to call Detective Sole, Officer Graham, and Officer Shaver as witnesses during the motion to suppress hearing. *Def.'s Brief* at 33. Mr. Campbell claims that they were critical to the issues

before the court. *Ibid.* Mr. Campbell further asserts that these officers would have established that they went to his room to search it and to seize items inside. *Ibid.*

The State cites the Appellate Division's determination that Mr. Campbell's arrest was lawful because he was obstructing arrest. *Pl. 's Brief at 8.* Moreover, the State argues that Mr. Campbell simply stated, without proof, that the arresting officers would testify that they entered his room to arrest and to seize items. *Ibid.*

As held in *Fritz*, the court can dispose petitioner's claim "based on absent witnesses fairly easily." 105 N.J. at 64. The court reasoned that "[t]hese witnesses have never been identified and their potential testimony have never been described. The case law makes clear that such purely speculative deficiencies in representation are insufficient to justify reversal." *Ibid.* In his brief, Mr. Campbell did not explain why the officers would have testified as suggested. This court is not comfortable accepting Mr. Campbell's suggestions without any concrete, robust, and convincing proof. Additionally, Mr. Campbell ignored that the Appellate Division upheld the trial's court findings. There, the trial court found that Officer Shaver secured the apartment and arrested Mr. Campbell for obstruction of arrest. Moreover, the trial court also found that the officers were acting in good faith and performed an official function. That said, after considering Mr. Campbell's argument, and basing on precedent—*Fritz* and the Appellate Division's holding—this court finds this argument meritless.

In conclusion, the trial attorney "[is] not required [to be] the best of attorneys, but certain not on so ineffective as to make the idea of a fair trial meaningless." *State v. Davis*, 116 N.J. 341, 351 (1989). Here, Mr. Campbell fails to prove that Ms. Aldrich was not reasonably competent. Furthermore, Mr. Campbell fails to show that Ms. Aldrich's representation fell below an

objective standard of reasonableness under prevailing norms. For those reasons, the court finds that Mr. Campbell has failed the first prong of the Strickland-Cronic-Fritz standard.

b. Mr. Campbells Fails to Show Prejudice from Ms. Aldrich’s Representation.

Unless the petitioner satisfies both prongs, it cannot be said that the conviction “resulted from a breakdown in the adversary process that renders the result unreliable.” *Strickland*, 466 U.S. at 687. That is, by failing the first prong, Mr. Campbell’s case has collapsed and there is no need for the court to continue addressing the second prong. But for completeness, this court will address it.

Not only is the second prong far more difficult, *Preciose*, 129 N.J. at 463, but it also requires prejudice to be proven in ineffectiveness cases, not presumed. *Fritz*, 105 N.J. at 52. Specifically, a petitioner alleging ineffective assistance of counsel “must show that there is ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” *Ibid*. However, prejudice is presumed in some ineffective assistance of counsel cases. *Id.* at 53. In certain circumstances “‘that are so likely to prejudice that the accused of the cost of litigating their effect in a particular case is unjustified’ a presumption of ineffectiveness is warranted.” *Ibid*. Those circumstances “involve the complete denial of the right to counsel altogether, actual or constructive.” *Ibid*.

In *Preciose*, the New Jersey Supreme Court found prejudice against the Defendant. 128 N.J. at 464. It reasoned that “the patently-inadequate preparation of both attorneys and the substitute attorney’s incorrect advice regarding his possible sentence, combined with the last-

minute substitution of attorneys, pressured him into pleading guilty. *Ibid.* Here, no such events occurred.

First, the court believes that Ms. Aldrich had fulfilled her duties by explaining and answering all of Mr. Campbell's questions about the plea deal and the plea forms. The court is convinced because Mr. Campbell neither questioned the court during its explanation of the convictions to be imposed nor objected the court's final sentencing. However, even if Ms. Aldrich failed to explain and answer all of Mr. Campbell's questions as alleged, it was a minor issue and did not result in any prejudice. Finally, the court has confidence in Mr. Campbell's confirmation—under oath—that Ms. Aldrich had explained and answered all his questions.

Second, there is no proof that Ms. Aldrich pressured Mr. Campbell into pleading except that he did not trust her abilities. The court is hesitant in believing Mr. Campbell's assertions. The court instead trusts Mr. Campbell's admission on the record that he was satisfied with Ms. Aldrich's services. Mr. Campbell also admitted that no one pressured him into pleading guilty.

Finally, the court is not convinced with Mr. Campbell's speculations that the officers would have testified that they entered his room to search and seize items. The trial court had found that it was more plausible that Officer Shaver entered the room and arrested Mr. Campbell for obstruction of arrest. Additionally, Appellate Division upheld the holding. So, the court believes that Ms. Aldrich's refusal to call several witnesses at the motion to suppress hearing was professionally reasonable.

To summarize, Mr. Campbell fails to establish that but for Ms. Aldrich's unprofessional errors, the result of the proceeding would have been different. In fact, the court believes that Ms. Aldrich's decisions—even if erroneous—did not prejudice Mr. Campbell in the plea and the

motion to suppress hearing. For these reasons, the court finds that Mr. Campbell fails prong two of the Strickland-Cronic-Fritz test.

B. MR. CAMPBELL FAILS TO ESTABLISH A PRIMA FACIE CASE SUFFICIENT TO REQUIRE AN EVIDENTIARY HEARING.

Trial courts ordinarily should grant evidentiary hearings to resolve ineffective assistance of counsel claims if a petitioner “has presented a prima facie claim in support of the [PCR] and the fact supporting the claims are outside the trial record.” *State v. Cummings*, 321 N.J. Super. 154, 170 (App. Div. 1999). Additionally, the facts are viewed in the light most favorable to a petitioner. *Ibid.* Finally, the petitioner “must allege facts sufficient to demonstrate counsel’s alleged substandard performance,” not bald assertions. *Ibid.* Certain facts are critical to claims of ineffective assistance of counsel and can only be resolved by “meticulous analysis and weighing of factual allegations, including assessments of credibility.” *State v. Porter*, 216 N.J. 342, 355 (2013). Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit and based upon personal knowledge of the declarant. *Ibid.*

In his certification, Mr. Campbell insists that Ms. Aldrich never discussed with him about trial proceedings and strategies after he informed her his desire to proceed to trial. *Def.’s Certif.* at ¶ 2-3. Mr. Campbell further claims that Ms. Aldrich never explained the difference between concurrent and consecutive sentences. *Id.* at ¶ 5. He was under the impression that he would have served 15, not 25 years. *Ibid.* Additionally, Mr. Campbell affirms that he would not have accepted the plea hearing had he knew of the 25 years sentence. *Id.* at 6. Thus, Mr. Campbell

claims that the pressure he felt during the plea hearing was from Ms. Aldrich refusing to proceed to trial. *Id.* at 8.

Mr. Campbell's asserted facts are viewed in the light most favorable to him. Stated otherwise, the court is to decide whether an evidentiary hearing will shed light on possible truths and inadequacies of Ms. Aldrich's services. In short, partly no: apart from Mr. Campbell failing both prongs of the Strickland-Cronic-and Fritz standard, the court acknowledges that Mr. Campbell's assertions contradicted the record. The facts asserted by Mr. Campbell does not give the court confidence that it should disregard the record. To explain, the record showed the court questioning Mr. Campbell about Ms. Aldrich's services, Mr. Campbell's satisfaction with Ms. Aldrich's services, Mr. Campbell's feelings of undue pressure or threats, and Mr. Campbell's understanding of the sentences. Although Mr. Campbell asserted otherwise, the court believes that Mr. Campbell's admissions in the record are more convincing. However, the record only contradicts two of Mr. Campbell's arguments.

Mr. Campbell's third argument—that Ms. Aldrich's refusal to call Detective Sole, Officer Graham, and Officer Shaver is ineffective assistance of counsel—might warrant an evidentiary hearing. Mr. Campbell asserts that the officers would have testified that they entered his room to search and seize items. Mr. Campbell's assertion raises a material fact dispute. If true, then Ms. Aldrich's failure to call them to the witness stand had effectively denied Mr. Campbell an alibi defense. Stated otherwise, without an evidentiary hearing, the court cannot determine whether Ms. Aldrich was ineffective as trial counsel. However, the facts asserted during the motion to suppress indicated that the officers entered Mr. Campbell's room to arrest him after he had obstructed arrest. The facts all aligned with the police report. So, Mr. Campbell's assertion that

the officers would have testified that they entered his room to search and seize items are simply false.

In sum, the court finds that Mr. Campbell's arguments are bald assertions and are not sufficient for a hearing. Therefore, the court denies Mr. Campbell's request for an evidentiary hearing

CONCLUSION

For the reasons above, the court should **DENY** the evidentiary hearing and **DENY** the PCR motion.

Applicant Details

| | |
|----------------------|--|
| First Name | Shelby |
| Middle Initial | C |
| Last Name | Burchell |
| Citizenship Status | U. S. Citizen |
| Email Address | shelby.burchell@lmunet.edu |
| Address | <div> Address Street 9710 Grove Lake Way Apt. 104 City Knoxville State/Territory Tennessee Zip 37922 Country United States </div> |
| Contact Phone Number | 8654408190 |
| Other Phone Number | 8654408190 |

Applicant Education

| | |
|--|---|
| BA/BS From | University of Tennessee-Knoxville |
| Date of BA/BS | May 2018 |
| JD/LLB From | Lincoln Memorial University |
| | Duncan School of Law |
| | https://www.lmunet.edu/duncan-school-of-law/index.php |
| Date of JD/LLB | May 15, 2021 |
| Class Rank | 5% |
| Does the law school have a Law Review/Journal? | Yes |
| Law Review/Journal | No |
| Moot Court Experience | Yes |
| Moot Court Name(s) | |

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

White, Bianca
bianca.white@lmunet.edu
Smith, Jason
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8656405988

References

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400 W Summit Hill Drive
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Shelby Burchell
9710 Grove Lake Way, Apt. 104
Knoxville, TN 37922
(865)440-8190

August 22, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at Lincoln Memorial University Duncan School of Law, and I am seeking a 2021-2023 clerkship with your court in Richmond, Virginia. I have family in Richmond and would be delighted to relocate and remain to practice law. My post graduate goal is to build upon my strong academic performance and legal experience thus far by serving in your court.

Although I am only beginning my semester at the United States Attorney's Office - Civil Division, my semester at Tennessee Valley Authority Office of the General Counsel (TVA-OGC) strengthened my writing skills and challenged me to research complex legal questions involving many areas of the law such as nuclear regulation and tort liability. I enjoy exploring new fields of law and tackling different legal issues each day.

I believe that a clerkship with your court would be the culmination of my experience at the US Attorney's Office and TVA-OGC. Throughout my first two years of law school, I cultivated a work ethic and attention to detail that I will carry with me throughout my career and hope to show you during the 2021-2023 clerkship term. I understand the type of work a federal clerkship demands and expects, and if given the opportunity, you will not find me wanting in my ability or dedication.

As requested, my resume, law school grade sheet, professional references, letters of recommendation, and writing sample are attached to this application. I hope to speak with you further about the position. Thank you for your consideration, and please let me know if I may provide you with any additional information.

Sincerely,

Shelby C. Burchell

Shelby C. Burchell

shelby.burchell@lmunet.edu • (865) 440-8190
9710 Grove Lake Way, Apt. 104, Knoxville, TN, 37922

EDUCATION

Lincoln Memorial University Duncan School of Law, Knoxville, TN

J.D. expected, May 2021

Class Rank: 4/81

GPA: 3.68

- Academic Honors:* Dean's List, Fall 2018, Spring 2019, and Fall 2019
Wills, Trusts, & Estates CALI Award, Summer 2020
Domestic Relations CALI Award, Fall 2019
Torts I CALI Award, Fall 2018
- Activities:* American Bar Association Rule of Law Initiative, Fall 2020
Billings, Exum & Frye National Moot Court Competition, Fall 2020
Moot Court Executive Committee, Summer 2020 – Present
Moot Court Board, Spring 2020 – Present

University of Tennessee, Knoxville, TN

B.A., Political Science, May 2018

GPA: 3.02

LEGAL EXPERIENCE

United States Attorney's Office, Knoxville, TN

Legal Extern, Eastern District of Tennessee – Knoxville, Fall 2020

- Researched and drafted a memorandum detailing the elements of 42 U.S.C. § 1395nn(a)(1)(A) – Stark, with reference to exceptions that analyze “commercial reasonableness” theory.
- Developed email timelines for witness interviews.

Tennessee Valley Authority, Knoxville, TN

Legal Intern, Office of the General Counsel, Spring 2020

- Prepared a memorandum and spreadsheet identifying Nuclear Regulatory Commission Office of Investigation reports by utilizing the NRC-ADAMS database and presented my findings to the Office of the General Counsel Leadership Team.
- Researched the parameters of the unconstitutional conditions doctrine, applied my findings to a TVA specific issue, and developed a brief summary of the relevant law and important cases.
- Developed a memorandum analyzing allegations of lost tax revenue as a basis to confer Article III standing.
- Conducted a survey of jury verdicts in personal injury actions, examined contributory negligence in the context of a jury trial and the showing required for a plaintiff to recover on an emotional distress claim, and synthesized the relevant legal framework into a concise memorandum.
- Examined the NRC's right to information pursuant to 10 C.F.R. § 2.204 - Demand for Information, explored case law involving objections to agency requests, and created a brief memorandum explaining my findings.

Knox County Juvenile Court, Knoxville, TN

Judicial Extern, Hon. Timothy E. Irwin, Summer 2019

- Crafted orders for review by the judge.
- Observed court matters involving visitation, custody, dependency and neglect, severe child abuse, and termination of parental rights.

COMMUNITY INVOLVEMENT

American Inns of Court, Knoxville, TN

Hilton Burnett Chapter, Fall 2020 – Present

Foster Care Review Board, Knoxville, TN

Board Member, Summer 2019 – Present

Shelby Burchell
Lincoln Memorial University Duncan School of Law
Cumulative GPA: 3.682

Fall 2018

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------|---------------------|-------|--------------|----------|
| Civil Procedure I | Sydney Beckman | A- | 3.00 | |
| Contracts & Sales I | Jennifer Levy-Tatum | B+ | 3.00 | |
| Legal Communication I | Timothy Conner | A- | 2.00 | |
| Legal Foundations I | Katie Jones | A | 0.00 | |
| Legal Research I | Bianca White | B+ | 1.00 | |
| Property I | Mohamed Faizer | A- | 3.00 | |
| Torts I | Bruce Beverly | A | 3.00 | |

Spring 2019

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|------------------------|---------------------|-------|--------------|----------|
| Civil Procedure II | Sydney Beckman | A- | 3.00 | |
| Contracts & Sales II | Jennifer Levy-Tatum | B+ | 3.00 | |
| Legal Communication II | Bella Wolitz | A | 2.00 | |
| Legal Research II | Katherine Marsh | A | 1.00 | |
| Property II | Mohamed Faizer | A | 3.00 | |
| Torts II | Bruce Beverly | A | 3.00 | |

Summer 2019

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------------------|-------------------|-------|--------------|----------|
| Constitutional Criminal Procedure | Melanie Reid | B+ | 3.00 | |
| Externship I | Brennan Wingerter | P | 3.00 | |

Fall 2019

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-------------------------|----------------|-------|--------------|----------|
| Criminal Law | Melanie Reid | A- | 3.00 | |
| Domestic Relations | Bruce Beverly | A | 3.00 | |
| Evidence | Sydney Beckman | A- | 3.00 | |
| Legal Communication III | Jason Smith | A- | 2.00 | |
| Legal Research III | Ann Long | B- | 1.00 | |

Spring 2020

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|------------------------|----------------|-------|--------------|----------|
| Business Organizations | Phillip Ashley | P | 3 | |
| Constitutional Law | Stewart Harris | P | 4 | |

| | | | |
|-----------------------------|--------------|---|---|
| Labor & Employment Law | Bianca White | P | 3 |
| Professional Responsibility | April James | P | 2 |

LMU Law incorporated a mandatory Pass/Fail grading system for the Spring 2020 semester due to the Covid-19 Pandemic.

Grading System Description

Lincoln Memorial University Duncan School of Law grades on a 4.0 scale.



April 24, 2020

Re: Shelby Burchell

To whom it may concern:

I am writing to recommend Shelby Burchell's application to serve as your law clerk. Shelby was a student in my Legal Research I class in the Fall of 2018 and in my Labor and Employment Law class in the Spring of 2020. After having Ms. Burchell in two of my classes, one at the beginning of her law school career and one recently, I am in a unique position to recommend her to serve as your clerk because I have seen improvement in her research and writing as well as her determination to sharpen these abilities. As evidenced in her application materials, Ms. Burchell ranks in the top of her law school class. Her academic record indicates her strive for excellence.

Furthermore, Ms. Burchell applied the concepts she learned in class to her work as a legal intern. I recall a time that she wanted to find a pattern jury instruction from 1976 that was first mentioned in a footnote and later held to be the instruction that should be used for a defense of contributory negligence in the case that she was citing. Her assigning attorney wanted to see if there was a difference in the wording of the instruction from the 1976 case and the one used today. In order to thoroughly quote the exact language for her memorandum, Ms. Burchell sought a copy of the original jury instruction. She came to me to discuss how to locate a pattern jury instruction from 1976. She contacted a librarian at the supreme court of the state of jurisdiction, requested a copy of the 1976 pattern jury instruction, and incorporated it into her memorandum to the satisfaction of her assigning attorney. Instead of telling her assigning attorney that the 1976 pattern jury instruction was not available online, she took the initiative to find exactly what was asked of her. This speaks to Ms. Burchell's commitment to accuracy and dedication to craft quality work product.

I am confident that you will find this young woman to be as committed to serving as your law clerk as she has been in the pursuit of her legal education. Her academic performance and work ethic indicate that she will be an asset to your chambers.

Sincerely,

A handwritten signature in black ink that reads "Bianca White". The signature is written in a cursive, flowing style.

Bianca White
Professor of Law, Student Services and Assessment Librarian
Lincoln Memorial University Duncan School of Law

LINCOLN MEMORIAL UNIVERSITY
Duncan School of Law

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August 22, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Prior to joining the faculty of LMU Duncan School of Law, I served as a clerk for over eight years to Judge D. Kelly Thomas, Jr., of the Tennessee Court of Criminal Appeals. During that time I supervised interns and helped train several new clerks. That experience taught me that some attorneys are geared toward clerking in the same way that some attorneys are geared toward trial, transactional, or appellate practice. After having her in my Legal Communication class last fall, I can tell that Shelby Burchell will be one of those attorneys with a natural aptitude for clerking. I am delighted that she has applied for a clerkship with you and know that she would be a benefit to your chambers.

Ms. Burchell has excelled academically in law school. She is a talented writer and excellent researcher. She is a member of our moot court team and its executive board. However, those are not the reasons why I think Ms. Burchell would be an excellent clerk. In class, Ms. Burchell worked well ahead of our deadlines and would submit nearly completed drafts for me to give her feedback on. Despite being a good writer, she was always working to improve her writing. Ms. Burchell would always have insightful questions for me in class or at our individual meetings. Additionally, she viewed my criticism and feedback without a trace of resentment and as a genuine chance to improve her writing skills.

A clerk needs to be an excellent writer and researcher. You can see from Ms. Burchell's resume and transcript that she is both. But there is a lot of on the job training for a clerk. A clerk has to be quick, self-reliant, and unafraid to ask questions. Ms. Burchell has demonstrated a level of self-discipline and self-awareness that is impressive for a law student. I am sure that she will thrive as a clerk and prove to be an invaluable asset to your chambers. If you would like to discuss Ms. Burchell's application further, please do not hesitate to contact me.

Sincerely,

Jason R. Smith
Assistant Professor of Law
LMU Duncan School of Law
601 West Summit Hill Drive
Knoxville, TN 37902
jason.smith02@lmunet.edu
865-545-5342

Jason Smith - jason.smith02@lmunet.edu - 8656405988

Writing Sample

Shelby C. Burchell
9710 Grove Lake Way, Apt. 104
Knoxville, TN 37922
(865)440-8190

I prepared the attached memorandum for the litigation practice group at my previous internship. This assignment analyzes lost tax revenue as a basis to confer Article III standing.

I received permission from this project's assigning attorney and my direct supervisor to use this work product as a writing sample. However, some portions of the document are redacted to exclude client information.

MEMORANDUM

To: [REDACTED]
From: Shelby Burchell
Re: Lost Tax Revenue Intern Project

Question Presented

In the litigation brought by [REDACTED], are the plaintiffs' allegations that the [REDACTED] caused them to suffer lost tax revenue sufficient to confer Article III standing?

Brief Answer

The plaintiffs' allegations of lost tax revenue may be an injury in fact sufficient to confer Article III standing because the Supreme Court recognized lost tax revenue as a basis to establish constitutional standing. However, the client's best argument is that there is no causal connection between the client's alleged actions and the plaintiffs' lost tax revenue because the plaintiffs' loss is not traceable to the client's alleged actions. The client should make this argument at the summary judgment stage of the litigation.

Facts

Omitted.

Analysis

First, this memorandum discusses cases in which the Supreme Court and circuit courts determined whether plaintiffs' lost tax revenue constitutes an injury in fact. Next, this memo briefs a circuit court case with similar facts to those in our case wherein the court analyzed the issue of causal connection between the plaintiffs' lost tax revenue and the defendant's action. Finally, this memo explains how the lack of a causal connection is our client's best argument for why the plaintiffs' claim of lost tax revenue is not sufficient to confer Article III standing.

I. Supreme Court and Circuit Court Cases Addressing Lost Tax Revenues as a Basis for Article III standing

In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the Supreme Court laid out the three elements needed to establish minimum constitutional standing. *Id.* at 561. First, the plaintiff must have suffered an injury in fact that is “concrete and particularized” and “actual or imminent.” *Id.* Second, the injury and the alleged conduct must be causally connected or traceable to the defendant’s action. *Id.* Third, the plaintiff’s injury must be likely to be redressed by a favorable decision. *Id.* As instructed, this memorandum analyzes the first two elements needed to establish constitutional standing, injury in fact and causation.

a. Injury in Fact

The Supreme Court found that lost tax revenue was an injury in fact when it was within the zone of interests that a statute sought to protect. However, the D.C. Circuit Court of Appeals found that lost tax revenue was a generalized grievance when there was not a link between the tax collector and the alleged wrongful act.

In *Bank of America Corporation v. City of Miami*, 137 S. Ct. 1296 (2017), the City of Miami alleged that Bank of America and Wells Fargo placed discriminatory loan conditions on minority borrowers in violation of the Fair Housing Act (FHA). *Id.* at 1301. The FHA prohibits discrimination in the terms, conditions, or sale or rental of housing based on race. *See Fair Housing Act*, 42 U.S.C.S. § 3604(b) (LEXIS 2020). In this case, the city claimed that it suffered financial losses due to the banks’ discriminatory practices. *Bank of America Corp.*, 137 S. Ct. at 1296. These losses included lowered property values resulting from increased foreclosure rates, decreased property tax revenue, and increased demand for city services. *Id.*

First, the Court concluded that the city’s lost tax revenue and extra municipal expenses satisfied the standing requirement because the injuries were within the zone of interests that the FHA protected. *Id.*; *see also, Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150

(1970) (“The question of standing [. . .] concerns [. . .] whether the interest sought to be protected by the complainant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question.”). The Court determined that the FHA afforded broad protection to anyone who has been or who is about to be injured by a discriminatory housing practice. *Bank of America Corp.*, 137 S. Ct. at 1304. Therefore, the Court held that the FHA gave the city a cause of action because the city fell within the legislatively defined category of an aggrieved person injured by a discriminatory housing practice. *Id.*

Regarding causation, the Court held that “foreseeability alone is not sufficient to establish proximate cause under the FHA.” *Id.* at 1306. The Court explained that proximate cause required a close connection between the discriminatory practices and the city’s injuries. *Id.* The Court remanded the case to the district court to determine whether, pursuant to the FHA, there was ‘some direct relation between the injury asserted and the injurious conduct alleged.’ *Id.* (quoting *Holmes v. Sec. Inv’r Pro. Corp.*, 503 U.S. 258, 268 (1992)); *see also*, *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 115 (“A significant reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services.”).

In *Pennsylvania ex rel. Shapp v. Kleppe*, 533 F.2d 688 (D.C. Cir. 1976), the State of Pennsylvania brought an action against the Small Business Administration (SBA) in order to enjoin the discontinuance of relief efforts that stemmed from the SBA’s disaster loan program under the Small Business Act (The Act) after Hurricane Agnes. *Id.* at 670. The Act provided assistance directly to small businesses as opposed to channeling assistance through states. *Id.* at 672. Pennsylvania claimed it had standing to sue on its own behalf and as *parens patriae* for its

citizens. *Id.* at 670. The trial court granted the SBA's motion to dismiss, holding that Pennsylvania lacked standing. *Id.*

The court of appeals evaluated the issue of Pennsylvania's standing based on the injuries to the state's proprietary interests and the injuries to its citizens under the theory of *parens patriae*. *Id.* at 671. The state alleged harm to its economy, the health, safety, and welfare of its people and injury to itself resulting from the inability to care for its citizens and a reduction in tax revenues. *Id.* The court of appeals classified the injury to Pennsylvania's economy and the health, safety, and welfare of its citizens as falling under *parens patriae* rather than the proprietary interest of the state. *Id.* However, the court evaluated the state's allegations of its inability to care for its citizens and reduction in tax revenue as injuries to the state's proprietary interest. *Id.* The court applied the *Association of Data Processing Services Organizations Inc v. Camp* zone of interests test to determine that Pennsylvania's alleged injuries were not within the zone of interests protected by The Act. *Id.* Further, the court found that the state lacked a sufficient injury in fact because the inability to care for one's citizens was better characterized as an injury to reputation doubtful to have been caused by the SBA's actions. *Id.* at 672.

In regard to the state's allegation of lost tax revenue, the court stated, "it appears to [the court] likely that this is the sort of generalized grievance about the conduct of government, so distantly related to the wrong for which relief is sought, as to not be cognizable for the purposes of standing." *Id.* The court suggested that a "fairly direct link" between the state as a tax collector and the act being challenged should be required. *Id.* The court concluded that "neither the impairment of the state's ability to look after its citizens nor the diminution of its tax revenues constitute[d] sufficient injury to state proprietary interests to confer standing." *Id.* The

court of appeals held that Pennsylvania lacked standing to sue the SBA and affirmed the trial court's dismissal of the complaint. *Id.* at 672-73.

Elemental to the injury in fact analysis is whether the injury to the plaintiffs was concrete and particularized and actual or imminent. For example, the Ninth Circuit Court of Appeals found that lost tax revenue was a concrete and particularized injury when the loss was more than merely speculative. In *City of Oakland v. Lynch*, 798 F.3d 1159 (9th Cir. 2015), the City of Oakland challenged the federal government's *in rem* forfeiture of Harborside, a medical marijuana dispensary. *Id.* at 1161. The government asserted that Oakland lacked Article III standing and that judicial review was precluded. *Id.* The court held that Oakland established that their expected loss of tax revenue was a sufficient injury for the purposes of Article III standing because if the medical marijuana dispensary closed, the decrease in tax revenue would be "directly attributable to the government's forfeiture action and redressable by a favorable ruling." *Id.* at 1163-64. The court found that Oakland's injury was not speculative because "[a]s of October 10, 2012, Harborside 'paid city and state taxes in excess of one million dollars,' and 'customers pay an 8.75% sales tax on all purchases'." *Id.*; see also, *City of Sausalito v. O'Niell*, F.3d 1186, 1197-98 (9th Cir. 2004) (Although the city could not sue under the theory of *parens patriae*, it could sue to protect its proprietary interests, and "[t]he 'proprietary interests' that a municipality may sue to protect are as varied as the municipalities responsibilities, powers, and assets." The city met its burden of establishing injury in fact due to an increase in traffic, pollution, and noise).

However, the Tenth Circuit Court of Appeals found that lost tax revenue due to snow mobile restrictions was not actual or imminent when there was no proof of a loss in revenue. In *Wyoming v. United States Department of the Interior*, 674 F.3d 1220 (10th Cir. 2012) the

petitioners challenged a 2009 rule governing the amount of snow mobile use in parks, and they alleged that they suffered economic losses and adverse displacement effects, which violated their proprietary interests. *Id.* at 1223. The district court dismissed their claim holding that they lacked standing. *Id.* The court of appeals explained that in order for the petitioners to prove economic losses, “[they] bear the burden of proving they have suffered an ‘injury in fact’ that is ‘concrete and particularized’ and ‘actual or imminent,’ not ‘conjectural’ or ‘hypothetical.’” *Id.*; (quoting *Defs. of Wildlife*, 504 U.S. at 560-61). The court held that the petitioners failed to show they suffered an injury in fact because although an environmental assessment (EA) concluded that some local businesses and individuals would suffer harmful economic effects, the EA did not conclude that the petitioners would suffer tax losses. *Wyoming*, 674 F.3d at 1232. The petitioners could not bring suit on behalf of their citizens, but instead had to show harm to their own interests. *Id.* at 1233. The court found that the plaintiffs “presented only a generalized grievance and holding otherwise might spark a wave of unwarranted litigation against the federal government.” *Id.* at 1234.

b. Causation

The D.C. Circuit Court of Appeals found that there was no causal connection between the spraying of herbicides and lost tax revenue when the plaintiff’s loss was not traceable to the defendant’s action. In *Arias v. DynCorp*, 752 F.3d 1011 (D.C. Cir. 2014), Ecuadorian provinces claimed their budgets were harmed by reduced tax revenue and a public health crisis resulting from the defendant, an American contractor, spraying herbicides across the provinces in an attempt to target illegal drug crops. *Id.* at 1013-14. The provinces claimed the defendant’s spraying “caused problems and dr[ove] large numbers of people away from the affected areas, which in turn forced the provinces to invest in additional schools, health centers, and other

infrastructure along the border.” *Id.* at 1015. The provinces alleged that they lost tax revenue, which could be seen in their annual budget deficit. *Id.*

The court of appeals affirmed the district court’s ruling that the provinces lacked Article III standing because they failed to allege that their loss of revenue was an injury in fact fairly traceable to the defendant’s spraying. *Id.* The court stated that “[l]ost tax revenue is generally not cognizable as an injury-in-fact for purposes of standing.” *Id.*, (quoting *Kleppe*, 533 F.2d at 62). The provinces’ expert admitted that any number of factors, including labor disputes, a volcanic eruption, and problems with tax collection, were responsible for budget deficits. *Arias*, 752 F.3d at 1015. Further, the court stated that “[a]lthough the provinces generally allege that land and crops were damaged, they never claim to actually own the land or crops at issue.” *Id.* The court recognized that the provinces’ direct expenditures on public health facilities such as health centers could suffice an injury in fact to confer standing. *Id.* However, the provinces did not show that these expenditures were traceable to the defendant’s actions because the issues addressed at the health centers, like the high infant mortality rate, were not proven to be caused by the spraying. *Id.*

II. The plaintiffs’ allegations of lost tax revenue may establish an injury in fact sufficient to confer Article III standing. However, at the summary judgment phase, the client should argue that there is no causal connection between the client’s actions and lost tax revenue because the plaintiffs’ loss, if any, is not traceable to the client’s actions.

In our case, the plaintiffs’ complaint states, “[t]he government entities sue directly to recover lost tax revenues both past and future, for [REDACTED]

[REDACTED] and all other services naturally incurred by the plaintiffs on behalf of their citizenry as set forth herein.” Compl., at [REDACTED].

Following the Supreme Court's decisions in *Bank of America Corporation v. City of Miami* and *Gladstone, Realtors v. Bellwood*, the plaintiffs may be able to establish an injury in fact. The [REDACTED] District of [REDACTED] may find, as the Supreme Court did in these cases, that lost tax revenue and extra municipal expenses are an injury in fact to establish constitutional standing. However, our case is distinguished from these cases because in both cases the plaintiffs brought suit under the FHA and alleged that the defendants engaged in discriminatory housing practices. The plaintiffs in our case may have a stronger argument if they bring their suit under a particular statute and claim that they are within the zone of interests in which the statute seeks to protect. In their complaint, the plaintiffs alleged that [REDACTED] [REDACTED]. Compl., at [REDACTED]. The plaintiffs did not make it clear that their injuries were within the zone of interests that these statutes were enacted to protect. However, the client should be aware of this potential argument.

In order for the client to assert that the plaintiffs' alleged lost tax revenue is not an injury in fact, the client needs to show that the plaintiffs' injury is not concrete and particularized because the plaintiffs' allegation of lost tax revenue is speculative. Unlike in *City of Oakland v. Lynch*, the plaintiffs in our case do not highlight a specific deficit in tax revenue in their complaint. The client can make the argument that the plaintiffs' allegation of lost tax revenue is speculative. However, in [REDACTED] [REDACTED], the [REDACTED] District of [REDACTED] cited a D.C. Circuit Court of Appeals case that allowed a municipality to seek relief for harm to itself through "a generous reading of the filings." [REDACTED] [REDACTED] (citing *City of Olmsted Falls v. F.A.A.*, 859 F.3d 261, 268 (D.C. Cir. 2022)). The [REDACTED] District may also apply a generous reading of the plaintiffs' amended

complaint. If so, this may make it more difficult to argue that the plaintiffs' lost tax revenue is speculative during the motion to dismiss phase.

However, in the summary judgment phase, when there is proof in the record, the client may be able to show that the plaintiffs' injury is not actual or imminent because there is no proof of lost revenue. Like in *Wyoming v. United States Department of the Interior*, the plaintiffs in our case claim [REDACTED]. This is conjectural or hypothetical as opposed to actual or imminent. The complaint alleges that [REDACTED] instead of monetizing the [REDACTED] actual losses in revenue.

The client's best argument is that there is no causal connection between the client's actions and lost tax revenue because the plaintiffs' loss is not traceable to the client's actions. Like in *Arias v. DynCorp*, the plaintiffs in our case claim that they suffered harm due to a reduction in tax revenue and [REDACTED]. Compl., at [REDACTED]. The plaintiffs in *Arias* alleged that the defendant's spraying forced them to invest in additional schools, health centers, and local infrastructure. *Arias*, 752 F.3d at 1015. Similarly, the plaintiffs in our case brought suit for lost tax revenue for [REDACTED]. Compl., at [REDACTED]. Unlike the plaintiffs in *Arias*, the plaintiffs in our case did not point to an annual budget deficit. In *Arias*, the court of appeals held that the plaintiffs lacked Article III standing because they failed to allege that their lost tax revenue was in injury in fact fairly traceable to the defendants spraying. *Arias*, 752 F.3d at 1015.

Like in *Arias*, the client's best argument is that any number of factors could be responsible for lost revenue. Further, the client can argue that the plaintiffs' expenditures are not traceable to the client's actions. Not only does the complaint fail to mention any direct [REDACTED] expenditures, but any [REDACTED] alleged must prove to be caused by the client's actions. The plaintiffs in *Arias* were unable to convince the court that their health expenditures

were caused by the defendant's spraying of herbicides. *Id.* To this point, the client can argue that there is not a "fairly direct link," as the court in *Kleppe* suggested necessary, between the plaintiffs as tax collectors and the client's actions. *Kleppe*, 533 F.2d at 672. As the Supreme Court stated in *Bank of America Corporation*, foreseeability alone is not enough to establish this direct link. 137 S. Ct. at 1306.

In *Arias*, the court issued a *Lone Pine*¹ order and required the plaintiff to answer questionnaires about their alleged injuries. *Arias*, 752 F.3d at 1014 (citing *Lore v. Lone Pine Corp.*, No. L 33606085, 1986 N.J. Super. LEXIS 1626 (Super. Ct. Nov. 18, 1986)). This is significant because the court in *Arias* had more information from these questionnaires about the plaintiff's injuries. In our case, the [REDACTED] District of [REDACTED] may need more information about the plaintiffs' injuries in order for the causal connection argument to be viable.

¹ A *Lone Pine* order "generally requires plaintiffs in toxic tort cases to produce affidavits setting forth some basic information regarding their alleged exposure and injury." *Arias*, 752 F.3d at 1014. *Lone Pine* Orders are used at the discretion of district judges and generally only in cases with multiple plaintiffs. *Id.*

Applicant Details

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|---------|--|
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|---------|--|

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Applicant Education

BA/BS From **Providence College**
 Date of BA/BS **May 2014**
 JD/LLB From **St. John's University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23311&yr=2010
 Date of JD/LLB **May 31, 2020**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **St. John's Law Review**
 Moot Court Experience **No**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial
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Externships
Post-graduate
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Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 18, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a law clerk with the Middlesex County Superior Court in New Brunswick, New Jersey, writing to apply for a Law Clerk position with your court. I believe that my attention to detail, communication skills, and diverse professional experiences, combined with my legal research and writing skills, make me a qualified candidate for the position.

I take pride not only in my ability to deliver high-quality work product, but to do so as a collaborative and responsive professional. My current position as clerk to Hon. Michael A. Toto, for example, has required significant dexterity and flexibility. As Assignment Judge, Judge Toto handles both civil and criminal matters including forfeiture cases, records requests, and firearms-related charges. In these matters, I provide thorough analysis of a wide range of legal topics, generally within a short window of time, and assist the Judge with preparing written opinions. Additionally, due to an onset of retirements of judges in the County, in recent months I have been working with Recall Judge Melvin Gelade, assisting with his civil docket as part of a four-judge panel. Taking on such wide-ranging responsibility, particularly in the context of restrictions related to the COVID-19 pandemic, has required considerable skill, flexibility, and good humor.

My work as Research Assistant to two different professors similarly required dexterity and responsiveness to supervisors' needs: Where Professor Elayne Greenberg requested intensive research and edits on articles dealing with sociological and legal themes, Professor Anita Krishnakumar requested deep-dive analyses into Supreme Court opinions, analyzing patterns of the Justices in their statutory interpretation opinions. These activities have required not only a great deal of organizational, analytical, and writing skill characteristic of any lawyer, but also a collaborative, problem-solving disposition.

With this mindset, I am eager to take on the challenge of working in a high-performing environment at your court. Please find attached my resume for your review, and I look forward to meeting with you to discuss my interest and qualifications. Thank you for taking the time to consider my application.

Sincerely,

John T. Burger

JOHN T. BURGER

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BAR ADMISSION

New York Appellate Division, Third Department (April 2021); Application Pending for New Jersey Bar Admission

LEGAL EXPERIENCE

HON. MICHAEL TOTO, NEW JERSEY SUPERIOR COURT, Middlesex County, New Brunswick, NJ

Judicial Clerk, August 2020 – August 2021

Conduct legal research, write bench memoranda, and prepare draft judicial decisions in both civil and criminal matters. (April – August 2021) Act as part-time clerk to Recall Judge Melvin Gelade due to shortage of judges in the County.

CATHOLIC CHARITIES COMMUNITY SERVICES, IMMIGRANT & REFUGEE SERVICES, New York, NY

Summer Intern, May 2019 – August 2019

Law Student Volunteer, August 2018 – May 2019

Performed client interviews in English, Spanish, and Portuguese. Represented clients before the Immigration Court, conducted fact investigations, performed legal research, prepared applications, and prepared clients to testify at hearings.

HON. LEONARD LIVOTE, NEW YORK STATE SUPREME COURT, Queens County, Jamaica, NY

Judicial Intern, Summer 2018

Conducted legal research, wrote bench memoranda, and prepared draft judicial orders and decisions. Performed various administrative tasks including filing and phone intake.

HINCKLEY ALLEN, LLP, Concord, NH

Legal Office Assistant, November 2016 – July 2017

Performed administrative tasks and case-related duties. Assisted attorneys with litigation and trial prep.

OTHER WORK EXPERIENCE

WORLDTEACH ECUADOR, Quito, Ecuador

Assistant Field Director, August 2015 – August 2016

Planned and executed Orientation conferences consisting of practical, cultural, linguistic, and classroom training. Brokered relationships with local institutions and host families. Managed logistics and support for in-country volunteers.

WORLDTEACH COLOMBIA, Tierrabomba Island, Cartagena, Colombia

Volunteer Teacher, June 2014 – July 2015

Worked as a full-time English teacher in the underprivileged, Spanish-speaking island town of Caño del Oro. Planned, executed, and evaluated lesson plans with six different co-teachers. Worked with students of nearly all ages, spanning from pre-school to high school.

EDUCATION

ST. JOHN'S UNIVERSITY SCHOOL OF LAW, Queens, NY

Juris Doctor, *cum laude*, May 2020

Academics: G.P.A.: 3.73; Rank: 19/250 (top 8%)

Honors: *Senior Articles Editor*, *St. John's Law Review*

Recipient, Pro Bono Service Award

Recipient, J. Roland Sala Scholarship (full tuition)

Recipient, Olive Reedy Trust Public Interest Fellowship, Summer 2019

Dean's List for All Qualifying Semesters

Activities: *Research Assistant*, Prof. Elayne Greenberg; Prof. Anita Krishnakumar; *Teaching Assistant*, Constitutional Law I; *Street Law Coordinator*, Latin American Law Students Association; *Student Group Liaison*, Dispute Resolution Society

Publications: *Contract Rights Under the I-864, Affidavit of Support: 7th Circuit's Reasoning Binds Courts' Hands in a Shifting Landscape for Public Charge Doctrine*, 93 ST. JOHN'S L. REV. 509 (2020)

Study Abroad: Río/São Paulo, Brazil, Montevideo, Uruguay (January 2020); Rome, Italy (June 2018)

PROVIDENCE COLLEGE, Providence, RI

Bachelor of Arts, *cum laude*, in Political Science and Spanish (double major), May 2014

SKILLS, CERTIFICATIONS AND INTERESTS

Fluent in Spanish, working knowledge of Portuguese; TEFL Certification through ACCREDITAT. Proficient in Microsoft Office, Adobe Pro, LexisNexis, and Westlaw. Personal interests include playing guitar, sports, and politics.

John Burger
St. John's University School of Law
Cumulative GPA: 3.73

Fall 2017

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|----------------------|---------------|-------|--------------|---|
| Civil Procedure | Sovern | A- | 4.00 | |
| Constitutional Law I | DeGirolami | A | 2.00 | |
| Contracts I | Sharfman | B+ | 3.00 | |
| Introduction to Law | Simons | N/A | 2.00 | This is a pass/fail course administered in the two weeks preceding the official start of classes for 1L's |
| Legal Writing I | Boyle Laisure | A- | 2.00 | |
| Torts | Joseph | A | 4.00 | |

Honors: Dean's List

Spring 2018

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------|---------------|-------|--------------|---|
| Constitutional Law II | DeGirolami | A | 3.00 | Received Dean's Award for Excellence (highest grade in class) |
| Contracts II | Sharfman | B+ | 2.00 | |
| Criminal Law | Levine | A | 3.00 | |
| Lawyering | Greenberg | B+ | 2.00 | |
| Legal Writing II | Boyle Laisure | B+ | 2.00 | |
| Property | Todres | B+ | 4.00 | |

Honors: Dean's List

Summer 2018

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|---|------------|-------|--------------|----------|
| Drafting: Transnational Civil Litigation | Montana | A | 2.00 | |
| International Art & Cultural Heritage Law | Edelman | A- | 1.00 | |
| Professional Responsibility: Global Context | Pepper | A | 3.00 | |

Fall 2018

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|----------------------------------|----------------------------|-------|--------------|----------|
| Alternative Dispute Resolution | Goski | A- | 2.00 | |
| Criminal Procedure: Adjudication | Bianco | B+ | 2.00 | |
| Law Review Note | Sharfman (faculty advisor) | A | 2.00 | |

| | | | |
|--|--------------|---|------|
| Refugee & Immigrant Rights Litigation Clinic | Torres | A | 4.00 |
| Trusts & Estates | Krishnakumar | A | 4.00 |

Honors: Dean's List

Spring 2019

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--|--------------|-------|--------------|---|
| Business Organizations | Wade | B | 4.00 | |
| International Commercial Arbitration | Thevenin | A | 2.00 | |
| Legislation & Statutory Interpretation | Krishnakumar | A | 3.00 | |
| Refugee & Immigrant Rights Litigation Clinic | Torres | A | 4.00 | Received Dean's Award for Excellence (highest grade in class) |

Honors: Dean's List

Fall 2019

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------|---------------------|-------|--------------|--|
| Accounting for Lawyers | Pilato | A | 2.00 | |
| Administrative Law | Krishnakumar Tucker | A- | 3.00 | |
| Evidence | Cunningham | A- | 4.00 | |
| Real Estate Transactions | DiLorenzo, Sein | P | 3.00 | Course was offered as a Pass/Fail after the initial professor left for medical reasons during the semester |

Honors: Dean's List

Spring 2020

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|---|---------------------|-------|--------------|----------|
| Comparative Legal Systems: Brazil & Uruguay | Meyer | A | 1.00 | |
| Federal Courts | Ward | CR | 3.00 | |
| Law Review Credit Hours | Smith; Krishnakumar | CR | 3.00 | |
| Lynching: Legal Dispute Resolution and Response to Violence | Greenberg; Wade | CR | 2.00 | |
| Taxation: Basic Federal Personal Income Tax | Davidian | CR | 3.00 | |

Due to the COVID-19 pandemic, all grades from this semester, with the exception of a winter inter-session course, were allocated on a Credit/Non-Credit (CR/NCR) basis.



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June 12, 2019

Dear Sir or Madam:

My name is Franco Torres. I am currently a Supervising attorney for the Immigration Law Services division of The Archdiocese of New York's Catholic Charities Community Service Program. I represent people *pro bono* in their immigration matters in the New York City and Lower Hudson Valley areas. In the course of that work, I supervise and mentor numerous volunteers, as well as undergraduate, graduate and law students. Particularly, our office works in conjunction with St. John's Law School through its Refugee and Immigrant Rights Clinic, where law students work with our clients under the supervision of Catholic Charities attorneys. I served as John's supervising attorney during his time here, between August 2018 and April 2019.

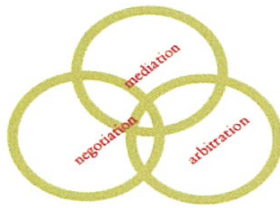
As a legal intern with our office, John was tremendous benefit to our team and the people we provide a wide variety of legal services to. He demonstrated his versatility and capacity by engaging in a variety of helpful legal tasks: legal research; drafting documents for submission to the immigration court, agencies, and family courts; screening clients for eligibility for immigration benefits; preparing applications for clients or those receiving *pro se* legal services from our agency; preparing evidentiary filings for submission to the immigration court; and finally, translating documents and conversation from Spanish to English,

John quickly made himself an invaluable member of my team, and continued to improve and excel throughout the course of the academic year. He demonstrated a high degree of initiative, insight, intellectual curiosity, and attention to detail. He possessed good time management skills and organization. He proved himself to be extremely trustworthy and able to work independently with minimal supervision, often anticipating impending issues and addressing them proactively. He displayed a strong passion for, rapport with, and commitment to our clients. John also has a personable manner and good-natured sense of humor, and is well-liked by attorneys, staff, and other interns at the office. I was thrilled when I heard his plans made him available to return to Catholic Charities for the summer of 2019. This summer John will be working with my colleague, Kee Han, as a summer intern.

I am confident that John's passion, intellect, charismatic personality, and work ethic will make him an excellent judicial clerk. I am therefore delighted to recommend John without reservation, and would be most happy to discuss him in greater detail if you wish. Please do not hesitate to contact me at (212) 419-3742 or franco.torres@archny.org.

Sincerely,

Franco Torres, Esq.



Elayne E. Greenberg
 Assistant Dean for Dispute
 Resolution Programs
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June 3, 2019

Recommendation for John T. Burger

It is my pleasure to strongly recommend John T. Burger for a judicial clerkship. I have had the pleasure of knowing Mr. Burger since January 2018. As Assistant Dean for Dispute Resolution Programs, Director of the Hugh L. Carey Center for Dispute Resolution (hereinafter Carey Center), Professor of Legal Practice and Faculty Chair of the Dispute Resolution Society (hereinafter DRS) at St. John's University School of Law, I have had the opportunity to get to know Mr. Burger in several contexts: as a student in my Lawyering class, as a member and then executive board member of the DRS, and as my research assistant on two scholarly writing projects. In addition, I have had the opportunity to have informal conversations with Mr. Burger about his professional goals and life interests. My recommendation is informed by my knowledge of Mr. Burger in these contexts.

I first met Mr. Burger when he was a student in my Lawyering class, a required first year course that introduces students to negotiation skills. Mr. Burger demonstrated the mastery of these skills when he was chosen to become a member of our DRS, the student arm of the Carey Center. As a DRS member, Mr. Burger distinguished himself with his low-keyed manner and thoughtful insights. During the many class discussions about the best way to address DRS' organizational issues, he would listen intently to other members' comments and then, and only then, would he offer an invaluable contribution that often reflected his nuanced understanding of the presenting issue and a sophisticated knowledge of the human dynamics involved. In another example, Mr. Burger was the only student in a bi-partisan gun legislation negotiation who prepared an agenda and a draft bill that helped organize and shape the conversation. As an executive board member, Mr. Burger has volunteered to be the Dispute Resolution Society's liaison to other St. John's

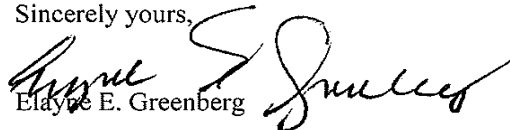
student organizations, a role suited to his ability to work foster collaborations with different interest groups.

During this spring and through the upcoming fall, I am fortunate to have Mr. Burger serve as my research assistant for two disparate writings: a rewrite of a co-authored law review article on strengthening online dispute resolution justice outcomes and a law review article on debiasing the racialized presumption of guilt in plea bargaining. I write “fortunate,” because I note that other distinguished professors at St John’s also sought out Mr. Burger to be their research assistant. Beyond his intelligence and exceptional research and writing skills, I have come to appreciate Mr. Burger’s enthusiasm for learning about unfamiliar areas, his comfort in asking questions and his confidence in critiquing presented ideas.

The rewrite of the online dispute resolution article was particularly challenging, because my co-author and I have different writing styles. Mr. Burger, however, skillfully intervened by developing an article assessment matrix that we could use to objectively resolve our writing differences. Once Mr. Burger appreciated that we truly wanted his candid feedback and didn’t want to be yessed, he provided invaluable critiques in a respectful and helpful manner that improved the clarity of the presented ideas. Mr. Burger is equally as enthusiastic about researching the plea bargaining article, an indication of the breadth of his interest and the scope of his talent.

In the above-described contexts and in my conversations with Mr. Burger, I have had the opportunity to observe his skills and values. I believe he would make an excellent law clerk. Like most of law clerk applicants, Mr. Burger is intelligent and has superior writing and research skills. Distinguishably, Mr. Burger has an unassuming ability to collaborate with many types of people and the welcome confidence to provide candid critiques about presenting ideas. In my interactions with Mr. Burger and my observations of his interactions with others, I have found him to be a person of integrity. Taken together, I believe these skills would make Mr. Burger an outstanding judicial clerk.

Sincerely yours,


Elayne E. Greenberg

ANITA S. KRISHNAKUMAR
MARY C. DALY
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ASSOCIATE DEAN FOR
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April 18, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: John T. Burger

Dear Judge Hanes:

It gives me great pleasure to recommend John Burger, who has applied to serve as a law clerk in your chambers. John is sharp, hardworking, and diligent—a strong student and a wonderful human being. I can say without reservation that he would make an excellent law clerk and a terrific colleague.

I have gotten to know John well over the past year, first as a student in my Legislation and Statutory Interpretation and Administrative Law courses and then as a research assistant. In class, John was always well-prepared, thoughtful, and highly insightful in his comments and observations. He is one of those rare students that a professor can count on to answer questions about a difficult case, and who also volunteers smart questions and comments.

I was so impressed with John's performance in my Legislation class that I asked him to be a research assistant for me this fall. And it is in that capacity that I have gotten to know John particularly well. I will say simply that not only is his work excellent, but John is an absolute pleasure to work with. I ask my research assistants to read U.S. Supreme Court statutory interpretation cases and to code them for the tools of statutory construction that they employ, as well as to write short summaries of each opinion in each case. This is a project I began in 2007 and I have hired countless research assistants to perform this work over the past twelve years. All have been among the law school's best students. Even among this elite group, John's work has been among the best I have encountered: His work is meticulous and thorough, and he communicates regularly with me throughout the process, seeking clarification on several nuanced questions, and writing detailed, sharp case summaries that have even occasionally pointed out issues I missed in my own review of the case. Moreover, John is incredibly reliable and mature—he always follows through and never misses a deadline.

In short, John is a wonderful student—smart, thoughtful, diligent as well as a pleasure to work with. He also is an incredibly hard-worker—in addition to maintaining top grades and serving on the Law Review, he served as a TA in Constitutional Law, as the coordinator for St. John's Street Law program, as a member of the Dispute Resolution Society, and as a research assistant for another law professor (Professor Greenberg) in addition to me, all time consuming jobs.

John is very interested in clerking and will excel at the job if given the chance. If you give him the opportunity, I have no doubt that he will be one of your hardest workers, as well as a thoughtful and respected colleague. He is an excellent student and human being, and I expect that he will have a very successful legal career. I hope that he gets the chance to begin it by working for you.

Thank you for considering this recommendation, and please let me know if I can provide any additional information about John that would assist you.

Sincerely yours,

Anita S. Krishnakumar
Mary C. Daly Professor of Law and Associate Dean for Faculty Scholarship
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Anita Krishnakumar - krishnaa@stjohns.edu



Marc O. DeGirolami
Professor of Law
Associate Director,
Center for Law and Religion

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School of Law
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(718) 990-6760
marc.degirolami@stjohns.edu

June 10, 2019

Dear Your Honor:

I write to recommend John Burger for a clerkship in your chambers.

Mr. Burger was a student in my Constitutional Law course in Fall 2017 and Spring 2018 (our course runs over two semesters). He earned grades of A in both semesters. His essays truly were superb and he was a regular and thoughtful contributor to class discussion. He achieved the top overall grade in the class.

Mr. Burger's stellar performance in Constitutional Law over the span of two courses convinced me that he would make an excellent teaching assistant for Constitutional Law I in Fall 2018 (I did not teach Constitutional Law II last year). He exceeded all expectations. He was reliable, proactive, engaged in the students' learning process, and once again demonstrated his exceptional understanding of Constitutional Law. Mr. Burger is someone interested in the deeper and more philosophical issues in the law, which was a true asset in the class and for his work as my teaching assistant. As you can see from his record, Mr. Burger has also greatly distinguished himself in his other courses at St. John's. He is at the top of his class.

I can also speak to Mr. Burger's personal character, as I've come to know it over the past few years. He is a serious and thoughtful student, a hard worker, a diligent and careful writer, and an extremely bright and promising lawyer.

Mr. Burger would be an excellent law clerk. He writes beautifully, and he has the temperament and discretion that would be an ideal fit in a judge's chambers.

I recommend him without any hesitation.

Please let me know if I can answer any other questions about his application.

Sincerely,

A handwritten signature in black ink, appearing to read "M. DeGirolami".

Marc O. DeGirolami

Writing Sample

John Burger
7 River Rd, Apt. 3
Highland Park, NJ 08904
(603) 344-8956
jt.burger42@gmail.com

The attached memorandum is a draft order submitted to Judge Michael A. Toto on a Motion for Reconsideration of a previous Order reinstating Plaintiffs, suspended police officers, in the midst of criminal prosecution by the State. This memorandum was submitted prior to any edits or revisions, and thus reflects my work alone. Some identifying information has been omitted to protect the privacy of the litigants.

| | | |
|---|---|---------------------------------------|
| PERSON A; PERSON B; PERSON C; PERSON D, | : | SUPERIOR COURT OF NEW JERSEY |
| | : | LAW DIVISION |
| | : | OLYMPIA COUNTY |
| Plaintiffs, | : | |
| | : | CIVIL ACTION |
| | : | |
| v. | : | DOCKET NOS. OLY-L-(xxxx-xx), |
| | : | OLY-L-(xxxx-xx), OLY-L-(xxxx-xx), and |
| | : | OLY-L-(xxxx-xx) |
| TOWNSHIP OF (TOWN) and | : | |
| (TOWNSHIP) POLICE | : | MEMORANDUM |
| DEPARTMENT, | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM

FACTS AND PROCEDURAL HISTORY

This consolidated Order concerns the activities of four Plaintiffs, suspended police officers (Person A), (Person B), (Person C), and (Person D). In a concurrent criminal matter, the State has alleged that the officers (1) failed to report to extra duty employment assignments and fraudulently accepted payments for unperformed work, and (2) accepted payment for extra duty employment that occurred during Plaintiffs' regular duty hours. Plaintiffs were each issued criminal Complaint-Summonses on June 1, 2018, and were suspended from their employment with Defendant (Township) Police Department on that same day. Pursuant to N.J.S.A. 40A:14-149.1, the officers were suspended without pay due to the criminal charges that had been filed against them.

On or about October 19, 2018, the Olympia County Prosecutor's Office obtained one indictment against all Plaintiffs, captioned as Olympia County Indictment No. (##-##-####-I). Plaintiffs alleged that the indictment was defective, charging that the Prosecutor failed to submit exculpatory evidence, failed to correct material misstatements to the grand jury, and failed to

establish necessary elements of the offenses charged. Judge (Criminal Judge) directed the Prosecutor to respond by February 7, 2020. On or about February 6, 2020, the Prosecutor sought an extension for the response, indicating that the office would re-present the case to a grand jury for a superseding indictment by the end of February. The case was not re-presented to a grand jury before the suspension of grand jury presentations due to the COVID-19 pandemic.

Judge (Criminal Judge) heard argument on, and ultimately granted, the Motion to Dismiss the Indictment on April 16, 2020, resulting in the dismissal of the indictment without prejudice. Judge (Criminal Judge) later issued a supplemental Order, clarifying that the dismissal of the Indictment also served to dismiss the underlying Complaint-Summonses. On May 8, 2020, new criminal Complaint-Summonses were issued against all Plaintiffs, containing substantially similar allegations. The Chief “continued” the suspensions of Plaintiffs on that same day. Judge (Criminal Judge) later dismissed these complaints with prejudice in an Order dated July 6, 2020.

Plaintiffs filed Verified Complaints, Orders to Show Cause, and Motions to Proceed Summarily between May 22, 2020, and May 27, 2020 before Judge (Civil Judge), seeking reinstatement and back pay in the wake of the dismissed Indictment. On July 15, 2020, the officers’ suspension was converted to a suspension with pay, effective July 6, 2020. The Court heard oral argument on July 13, 2020, and issued an Order on September 14, 2020 granting Plaintiffs’ orders, reinstating Plaintiffs to their positions as Edison Police Officers with pay status, and awarding back-pay and all contractual benefits retroactive to June 1, 2018. The Court further ordered that Plaintiffs be reimbursed for their legal expenses, including but not limited to attorneys’ fees.

Defendant filed the instant Motion for Reconsideration on October 2, 2020. Defendants move the Court to vacate the Court’s September 14, 2020 Order and enter judgment in favor of Defendants denying Plaintiffs’ Order to Show Cause and dismissing Plaintiffs’ Verified Complaint

in its entirety with prejudice. Plaintiffs' attorneys submitted a consolidated opposition to the Motion on November 5, 2020, and Defendants submitted a Reply on November 9, 2020. Oral argument was held on November 13, 2020.

LAW AND ANALYSIS

Reconsideration Under R. 4:49-2

Motions for Reconsideration are governed by R. 4:49-2, which requires movants to state with specificity the basis upon which the motion is made. Specifically, the Rule states:

A motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served no later than 20 days after service of the judgment or order upon all parties obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of matters or controlling decisions which counsel believes the Court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the Court's corresponding written opinion, if any.

It is well settled that reconsideration should be utilized only for cases that “fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Thus, “a litigant must initially demonstrate the Court acted in an arbitrary, capricious or unreasonable manner, before the Court should engage in the actual reconsideration process.” Id.

Here, there are two primary issues sought for reconsideration. The first is whether reinstatement and backpay were properly awarded under N.J.S.A. 40A:14-149.2. The second is whether attorney's fees were properly awarded under N.J.S.A. 40A:14-155. These issues will be discussed in reverse.

Counsel Fees Under N.J.S.A. 40A:14-155

With respect to the relief of counsel fees at issue in the September 14, 2020 Order, N.J.S.A. 40A:14-155 provides:

Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

The parties agree that Aperuta v. Pirrello provides the applicable standard in this case. The parties dispute, however, whether Plaintiffs are “defendant[s] in any action or legal proceeding *arising out of and directly related to the lawful exercise of police powers* in the furtherance of [their] official duties” (emphasis added). The Court does not decide this question here. For the reasons discussed in detail below, this Court finds that the criminal matter has not been “dismissed or finally determined in favor of the . . . officer[s].” Where this is a necessary condition for an award of counsel fees under N.J.S.A. 40A:14-155, Plaintiffs are not yet entitled to fees, Defendants’ Motion for Reconsideration of the September 14 Order to the contrary will be granted, and Plaintiffs’ prayer for counsel fees under this provision will be denied without prejudice.

Reinstatement and Backpay Under N.J.S.A. 40A:14-149.2

With respect to the relief of reinstatement and backpay at issue in the September 14, 2020 Order, N.J.S.A. 40A:14-149.2 provides:

If a suspended police officer is found not guilty at trial, the charges are dismissed or the prosecution is terminated, said officer shall be reinstated to his position and shall be entitled to recover all pay withheld during the period of suspension subject to any disciplinary proceedings or administrative action.

Defendants make two separate arguments that denial of this relief is proper. First, they argue that Judge (Criminal Judge)’s April 16, 2020 and May 6, 2020 Orders did not have the effect of “dismiss[ing]” the charges or “terminat[ing]” the prosecution, as those Orders dismissed the indictment and, vis-à-vis, the summons and complaint, without prejudice, and actively contemplated that the Prosecutor’s Office would reinstate the claims by seeking re-presentment before a grand jury. They rely on Matter of Gauthier, 461 N.J. Super. 507 (App. Div. 2019), cert. denied, 241 N.J. 138 (2020), where the Appellate Division, in an analogous context, declined to allow back pay for officers whose criminal charges were dismissed after successful completion of pretrial intervention. That case states, “[o]nly those who receive favorable dispositions enjoy that benefit.” Id. at 517. Judge (Criminal Judge)’s dismissal without prejudice of the indictments, Defendants argue, did not amount to a “favorable disposition[.]” because it was not dispositive of the accused’s innocence of the crime for which he was charged.

Defendants’ second argument connects three observations. First, the final clause of the statute—“subject to any disciplinary proceedings or administrative action”—implies that a municipality need not reinstate an offending officer where the municipality intends to serve the officer with disciplinary charges. See Grubb v. Borough of Hightstown, 353 N.J. Super. 333, 349 (App. Div. 2002). Second, pertinent Attorney General Guidelines require that internal affairs investigators should stay their own inquiries pending resolution of an underlying criminal inquiry.¹ And, lastly, the Prosecutor’s Office has not returned the matter to the agency. Connecting the dots, Defendants’ argument is as follows: Reinstatement should have been denied under the statute because the Township has been unable to bring disciplinary proceedings or administrative action

¹ “Where preliminary investigation indicates the possibility of a criminal act on the part of the subject officer, . . . the county prosecutor must be notified immediately. In either case, *no further action should be taken, including the filing of charges against the officer*, until directed by the county prosecutor.” Requirement 6 of the Attorney General Guidance on Internal Affairs Policy & Procedures (emphasis added).

against Plaintiffs due to circumstances beyond its control, action which would preclude the issuance of back pay under the statute.

Plaintiffs correctly observe that N.J.S.A. 40A:14-149.2 provides three discrete, alternative conditions that would entitle officers to backpay: (1) trial where a defendant officer is found not guilty, (2) dismissal of the charges, or (3) the termination of the prosecution. This Court finds that the first condition is inapplicable, and that considerable evidence precludes a finding that the prosecution has been “terminat[ed].”² Thus, the question before the Court is one of statutory construction: whether Judge (Criminal Judge)’s dismissal, without prejudice, of the indictment and complaints amounts to a dismissal of the charges under the statute.

The Court finds in the negative, and finds Defendants’ reasoning persuasive in two aspects: First, the April 16, 2020 Order did not amount to a “dismiss[al]” of the charges under N.J.S.A. 40A:14-149.2. Second, where Plaintiffs’ relief was “subject to any disciplinary proceedings or administrative action,” and Defendants have been unable to bring such proceedings despite an intention to do so, such relief should be precluded. These findings will be analyzed in turn.

First, the language of N.J.S.A. 40A:14-149.2 strongly suggests that the three statutory conditions, including the “dismiss[al]” of the charges, require a final, favorable resolution in the Plaintiffs’ favor before reinstatement and back pay are awarded. The Court observes that the other two conditions—involving a finding of “not guilty at trial” or a “terminat[ion]” of the prosecution—clearly indicate a final, favorable disposition in the suspended police officer’s favor. Where three discrete and juxtaposed conditions trigger relief, the canon of *noscitur a sociis* instructs the Court to read the “charges are dismissed” condition similarly to the other two: The

² Primarily, the Court relies on the State’s efforts to reinstate Complaints against the officers on May 8, 2020, after the issuance of the April 16, 2020 Order. Additionally, the Court relies on the ongoing criminal litigation before Judge Jimenez, demonstrated extensively in the Exhibits affixed to Plaintiffs’ Motions for Counsel fees filed and discussed within the context of this Reconsideration motion.

“dismiss[al]” must be final and favorable. See Herzog v. Township of Fairfield, 349 N.J. Super. 602, 607 (App. Div. 2002) (explaining that the *noscitur a sociis* canon, drawn upon to clarify a term’s meaning where multiple statutory terms are juxtaposed, is a helpful guide to understand the scope of statutory language where legislative purpose is unclear); see also Soto v. Scaringelli, 189 N.J. 558 (2007) (citing Falcone v. Branker, 135 N.J. Super. 137 (Law Div. 1975)) (drawing on the *noscitur a sociis* canon to imply a condition of “substantial[ity]” into an automobile insurance statute). Case law and legal definitions support this understanding of the statute. See, e.g., Matter of Gauthier, 461 N.J. Super. 507, 515 (App. Div. 2019), cert. denied, 241 N.J. 138 (2020) (holding that a defendant’s admission into a pretrial intervention program did not constitute a “favorable disposition” where it did not reflect a final determination on the merits in the defendant’s favor); see also Rubin v. Nowack, 248 N.J. Super. 80, 83 (App. Div. 1991) (noting that, in seeking a “favorable disposition,” courts focus “on whether the termination was or was not dispositive as to the accused’s innocence of the crime for which he was charged”); Kerwick v. Mayor of Trenton, 184 N.J. Super. 235, 240 (Law Div. 1982) (“Disposition in his favor means exculpation and not some lesser degree of success.”); Black’s Law Dictionary, 313 (5th ed. 2016) (defining “exculpate” as “to free from blame or accusation; esp., to prove not guilty”).

Here, the “dismiss[al]” of the charges does not meet the standard of finality required under N.J.S.A. 40A:14-149.2. As Defendants note, in the Order issued April 16, 2020, Judge (Criminal Judge) actively contemplated that the prosecution of the case would continue, ordering:

[T]hat the Motion to Dismiss this indictment jointly filed by all defendants is granted *without prejudice*, as are any release conditions imposed upon any of the defendants, *and that the State can re-present this case to a grand jury*, as they indicated they needed to do, when grand jury proceedings are reconvened.

This dictate falls far short of the “favorable disposition” required for reinstatement and back pay under N.J.S.A. 40A:14-149.2, as discussed in Gauthier. The Order focused primarily on

the defects in the process undertaken to secure an indictment; it did not make express exculpatory findings in Plaintiffs' favor. Indeed, its dismissal *without* prejudice, along with its invitation to the State to re-present the case to a grand jury, preclude a finding that the dismissal was final or exculpatory on the merits. Accordingly, the April 16, 2020 Order did not amount to a "dismissal of the charges" as required under the statute.

Second, the Plaintiff's entitlement to back pay is "subject to any disciplinary proceedings or administrative action." This clause has the effect of barring recovery where the municipality contemplates filing "disciplinary proceedings or administrative action," but is unable or unwilling to do so because of the pendency of criminal charges. See Grubb v. Borough of Hightstown, 353 N.J. Super. 333, 349 (App. Div. 2002). As the trial court in Grubb observed:

[I]t behooves a local law enforcement to await the final disposition of all criminal charges pending the filing of disciplinary charges. At that point, the department has available a complete record of the criminal charges and related investigations and the benefit of any ruling by an Appellate Court. Additionally, while the criminal matter is ongoing the due process rights and privileges of the officer are protected. To compel the authorities to file disciplinary charges and/or proceed with hearings is contrary to the rights afforded to other citizens. Importantly, the disposition of the criminal charges may have a bearing on the disciplinary charges and the review by the appropriate governing body.

331 N.J. Super. 398 (Law Div. 2000), *aff'd*, Grubb v. Borough of Hightstown, 353 N.J. Super. 333, 349 (App. Div. 2002). These policy concerns animate Requirement 6 of the Attorney General Guidance on Internal Affairs Policy & Procedures, along with its Policy & Procedures released in December 2019. These provisions make clear that internal affairs matters are to be addressed "[u]pon disposition of the criminal investigation" related to the matter. It follows logically, then, that Plaintiffs' entitlement to relief under N.J.S.A. 40A:14-149.2 is triggered only upon (1) a final disposition of the underlying criminal matter, *and then* (2) the resolution of disciplinary proceedings or administrative actions, which are subject to strict deadlines under the Attorney

General Guidelines. See Grubb, 353 N.J. Super. at 349; Office of the Attorney General, Internal Affairs Policy & Procedures art. 6 *et seq.* (2019). To issue reinstatement or back pay before the agency has been able to initiate disciplinary proceedings or administrative actions, then, would short-circuit the operation of this scheme.

For these reasons, this Court finds that Judge (Civil Judge)'s September 14, 2020 Order was issued prematurely and in error. First, it was decided on the palpably incorrect basis that Judge (Criminal Judge)'s Orders constituted a disposition of the case sufficient to trigger any of the three possible conditions articulated in N.J.S.A. 40A:14-149.2. Second, Judge (Civil Judge)'s Order incorrectly precluded the operation of the statutory clause pertaining to disciplinary proceedings or administrative action. Finally, while the September 14 Order included extensive findings of law and fact, all findings were taken verbatim from Plaintiffs' initial Proposed Order, and with little consideration to arguments or issues raised by Defendants' counsel in its Opposition or at oral argument. With these observations taken together, this Court finds that Judge (Civil Judge)'s September 14, 2020 Order was issued on palpably incorrect bases and ought to be reconsidered under R. 4:49-2.

The Court is sympathetic, however, to Plaintiffs' desire for a resolution on this case, and to their desire for an opportunity to defend their innocence on the substance of the claims. The Court observes that Plaintiffs' criminal proceedings have undergone significant delays that have deprived them of such opportunities. Some of these delays resulted from the defective indictments issued in October 2018. Others resulted from the State's failure to comply with its own deadlines to re-present the matter before a grand jury. And, unfortunately for all parties, some delays have resulted from the onset of the COVID-19 pandemic, during which grand jury presentations have been suspended. None of these considerations, however, can properly compel the Court to reinstate

Plaintiffs to their positions or authorize back pay under N.J.S.A. 40A:14-149.2 before the cessation of the case.³ The Court urges both the State and Defendants to complete their investigations in the most expeditious manner feasible, but it cannot, under the statute, prematurely award the relief that Plaintiffs seek.

Accordingly, Defendants' Motion for Reconsideration of Judge (Civil Judge)'s September 14, 2020 Order is hereby **GRANTED**, and the relief requested in Plaintiffs' Order to Show Cause is hereby **DENIED** without prejudice.

³ This Court does not reach the issue of whether Chief Bryan retains the authority to suspend the officers under N.J.S.A. 40A:14-149.1, which more specifically provides that the officers may be suspended "until the *complaint* is dismissed" (emphasis added).

Applicant Details

First Name **Patrick**
 Middle Initial **R**
 Last Name **Burnett**
 Citizenship Status **U. S. Citizen**
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 Address

Address**Street****709 N Franklin St, Apt. 102****City****Philadelphia****State/Territory****Pennsylvania****Zip****19123****Country****United States**

Contact Phone Number **3306204173**

Applicant Education

BA/BS From **American University**
 Date of BA/BS **May 2015**
 JD/LLB From **The George Washington University Law School**
<https://www.law.gwu.edu/>
 Date of JD/LLB **May 16, 2021**
 Class Rank **5%**
 Law Review/Journal **Yes**
 Journal(s) **The George Washington Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Patrick Burnett

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September 4, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a law student at The George Washington University Law School and will be graduating in May 2021. I am writing to apply for a judicial clerkship with you for the 2021-23 Term. I am enclosing my resume, my law grade sheet, and a writing sample. Enclosed as well are recommendations from Professors Dickinson and Gavoor. Thank you for your consideration.

Respectfully,

Patrick Burnett

PATRICK BURNETT

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EDUCATION

The George Washington University Law School

Washington, DC

J.D. (GPA: 3.904)

Expected May 2021

Honors: George Washington Scholar (Top 15% of class, as of Fall 2019)

Journal: *The George Washington Law Review*, Articles Editor

Research: Research Assistant to Prof. Laura Dickinson on national security law (Sept. 2019 - Present)

Activities: International Refugee Assistance Project, Deputy Legal Director; Gulf Recovery Network (Dec 2019); Border Immersion Program, El Paso, TX (Feb. – Mar. 2020); Constitutional Law I Tutor (Spring 2020)

American University

Washington, DC

B.A., summa cum laude, International Studies; German Language minor (GPA: 3.97)

May 2015

Honors: University Honors in International Studies

Capstone: *Fractures vs. Fragments: The German and American Muslim Communities, Integration, and Internal Affairs*, supervised by Prof. Akbar Ahmed

Activities: Research Assistant to Chair of Islamic Studies; Peer Advisor; Team Co-Captain, Relay for Life
Study Abroad: Freie Universität Berlin, Berlin, Germany (Fall 2013)

SELECTED EXPERIENCE

United States District Court for the District of Columbia

Washington, DC

Judicial Intern for the Hon. Randolph D. Moss

August - November 2020

- Draft memoranda on a range of federal criminal and civil matters before Judge Moss.
- Cite-check Judge Moss's memoranda opinions in their final stages of drafting.

Murray Osorio PLLC

Fairfax, VA

Summer Law Clerk

May - July 2020

- Drafted briefs for a Fourth Circuit appeal of an asylum application denial, defensive asylum cases before the Arlington and El Paso Immigration Courts, and an application for an I-601A waiver.
- Drafted an adjustment of status application under attorney supervision.
- Conducted research and authored related memoranda on topics which include the consequences of reinstated removal orders and the 10-year bar of inadmissibility.

Arlington Immigration Court

Arlington, VA

Volunteer Legal Intern

May - July 2019

- Prepared memoranda for immigration judges regarding asylum and cancellation of removal decisions.
- Researched changes in immigration law at the Board of Immigration Appeals, Fourth Circuit Court of Appeals, and U.S. Supreme Court.

American University School of International Service

Washington, DC

Program Assistant, Ibn Khaldun Chair of Islamic Studies

July 2015 - July 2018

- Drafted briefs for Ambassador Akbar Ahmed, the Ibn Khaldun Chair, on issues concerning Muslim minority communities in the West, South Asian politics, and global interfaith relations.
- Fact-checked and proofread Ambassador's book, *Journey into Europe: Islam, Immigration, and Identity* (Brookings Press, 2018).
- Wrote editorials highlighting the Ambassador's activities, published in *HuffPost*, *The Plain Dealer* (Cleveland, OH), *Al-Bilad* (Saudi Arabia), and *The Express Tribune* (Pakistan).

ADDITIONAL INFORMATION

Languages: German (Level C1; highly proficient reading and writing, proficient speaking)

Interests: Biking, Hiking, Long-Form Journalism, DC and Cleveland Sports